Supreme Court, U.S.
FILED

001135 JAN 15 2001

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

DWAYNE JAMES, JEWEL A. JAMES, a minor by next friend LOUISE KARTER, and LOUISE KARTER as Administratrix of the Estate of ROSA J. OWOLABI,

Petitioners,

v.

MAZDA MOTOR CORPORATION, MAZDA MOTOR OF AMERICA, INC., TOKAI RICA CO., LTD., and JOHN DOE,

Respondents.

On Petition For Writ Of Certiorari To The Eleventh Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

GERALD P. WORD
Counsel of Record
JOHNSON, WORD & SIMMONS
306 Tanner Street
P. O. Box 521
Carrollton, GA 30117
(770) 830-1323
Georgia Bar No. 776375

Attorneys for Petitioners Dwayne James, Jewel A. James and Louise Karter

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

66 pp

QUESTIONS PRESENTED FOR REVIEW

1. Are Petitioners' design defect claims against Respondents for failing to design a safe passive restraint system pre-empted by the Federal Motor Vehicle Safety Standards?

2. Are Petitioners' failure to warn claims against Respondents for failing to warn of the dangers of using the passive shoulder belt without the manual lap belt pre-empted by the Federal Motor Vehicle Safety Standards?

3. Can there be pre-emption when the manufacturer admits that their seat belt system poses a safety hazard?

LIST OF ALL INTERESTED PARTIES AND PARENT COMPANIES

ANDREW T. BAYMAN, attorney for Respondents

LANNY B. BRIDGERS, attorney for Respondents

HONORABLE WILLIS B. HUNT, United States District Judge

DWAYNE JAMES, plaintiff

JEWEL A. JAMES, plaintiff

LOUISE KARTER, Administratrix of the Estate of ROSA J. OWOLABI, plaintiff

JOHNSON, WORD & SIMMONS, attorneys for Petitioners

KING & SPALDING, attorneys for Respondents

JOHN F. MANNING, attorney for Petitioners

MAZDA MOTOR CORPORATION, Respondent

MAZDA MOTOR OF AMERICA, INC., Respondent

MARYELLEN SIMMONS, attorney for Petitioners

TOKAI RICA CO., LTD., Respondent

GERALD P. WORD, attorney for Petitioners

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

LIST OF ALL INTERESTED PARTIES AND PARENT COMPANIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

CITATIONS TO THE OFFICIAL AND UNOFFICIAL REPORTS 1

BASIS FOR JURISDICTION 1

STATUTES AND REGULATIONS INVOLVED IN THIS CASE 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 5

I. ARE PETITIONERS' DESIGN DEFECT CLAIMS AGAINST RESPONDENTS FOR FAILING TO DESIGN A SAFE PASSIVE RESTRAINT SYSTEM PRE-EMPTED? 7

II. ARE PETITIONERS' FAILURE TO WARN CLAIMS PRE-EMPTED BY THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS? 14

A. Failure To Separately Analyze Warnings Claims 15

B. The Pre-Emption Analysis 17

1. First Prong 18

2. Second Prong 19

C. The DOT Interpretation 20

TABLE OF CONTENTS – Continued

Page

III. CAN THERE BE PRE-EMPTION WHEN THE MANUFACTURER ADMITS THAT THE SEAT BELT SYSTEM POSES A SAFETY HAZARD? .. 22

CONCLUSION 25

TABLE OF AUTHORITIES

Page

CASES

Banks v. ICI Americas, Inc., 264 Ga. 732, 450 S.E.2d 671 (1994) 9

Chrysler Corp. v. Batten, 264 Ga. 723, 450 S.E.2d 208 (1994) 15

Cipollone v. Liggett Group, Inc., 505 U.S. 504, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992) 17

Collazo-Santiago v. Toyota Motor Corp., 957 F. Supp. 349 (D.P.R. 1997) 7

CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 113 S.Ct. 1732, 123 L.Ed.2d 387 (1993) 17

Daniels v. Bucyrus-Erie Corp., 237 Ga. App. 828, 516 S.E.2d 848 (1999) 15

Fisher v. Ford Motor Company, 224 F.3d 570 (6th Cir. 2000) 18

Ford Motor Co. v. Stubblefield, 171 Ga. App. 331, 319 S.E.2d 470 (1984) 15

Freightliner v. Myrick, 514 U.S. 280, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995) 17, 18, 19, 24

Geier v. Honda, 529 U.S. 1913, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000) ..... *passim*

Hernandez-Gomez v. Volkswagen of America, Inc., et al., 185 Ariz. 509, 917 P.2d 238 (1996) 6

Hyundai Motor Company v. Alvarado, 41 Tex. Sup. Ct. J. 947, 974 S.W.2d 1 (1998) 6

TABLE OF AUTHORITIES – Continued

Page

Irving v. Mazda Motor Corp., 136 F.3d 764 (11th Cir. 1998) 5, 7, 14, 16

James v. Mazda Motor Corp., 222 F.3d 1323 (11th Cir. 2000) 1

King v. Ford Motor Co., 209 F.3d 886 (6th Cir. 2000) 7, 20

Medtronic, Inc. v. Lohr, 518 U.S. 470, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) 17, 24, 25

Northwest Cent. Pipeline Corp. v. State Corp. Comm'n, 489 U.S. 493, 109 S.Ct. 1262, 103 L.Ed.2d 509 (1989) 17

Perry v. Mercedes Benz of North America, Inc., 957 F.2d 1257 (5th Cir. 1992) 19

Udall v. Tallman, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965) 21

STATUTES

15 U.S.C. § 1391(2) 11, 20, 23

15 U.S.C. § 1397(k) 1, 11, 20

15 U.S.C. § 1411 ..... 1, 22, 23

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1332 3

RULES AND REGULATIONS

49 C.F.R. § 571.208 (FMVSS 208) ... 1, 12, 16, 18, 19, 21

49 C.F.R. § 571.105 12

TABLE OF AUTHORITIES – Continued

Page

49 C.F.R. § 571.125 11

49 C.F.R. § 573.5 ..... 1, 22

Rule 10(a), Supreme Court Rules 1, 5

MISCELLANEOUS

49 FR 28965 13

NTSB Study on Special Investigations on Automatic Restraints On Passenger Vehicles, Draft May 23, 1993 8

Pathology of Trauma Attributed to Restraint Systems in Crash Impacts, Snyder, Richard G., et al., Federal Aviation Administration Office of Aviation Medicine, February 1969 8

Seat Belt Injuries in Impact, Snyder, Richard G., et al., University of Michigan, Ann Arbor: Highway Safety Research Institute (1967) 8

CITATIONS TO THE OFFICIAL AND UNOFFICIAL REPORTS

The opinion of the United States Court of Appeals for the Eleventh Circuit is found at *James v. Mazda Motor Corporation*, 222 F.3d 1323 (11th Cir. 2000).

BASIS FOR JURISDICTION

Judgment was entered by the United States Court of Appeals for the Eleventh Circuit on August 18, 2000. Rehearing was denied on October 17, 2000.

Petitioners believe that jurisdiction is conferred upon the United States Supreme Court to review this matter pursuant to 28 U.S.C. § 1254(1) and Rule 10(a), Supreme Court Rules.

STATUTES AND REGULATIONS INVOLVED IN THIS CASE

The disposition of this case involves construction of the following statutes and regulations:

15 U.S.C. § 1392(d) (currently codified at 49 U.S.C. § 30103(b))

15 U.S.C. § 1397(k) (currently codified at 49 U.S.C. § 30103(e))

15 U.S.C. § 1411 (currently codified at 49 U.S.C. § 30117(c))

49 C.F.R. § 571.208 S4.1.2.1

49 C.F.R. § 573.5(a)

STATEMENT OF THE CASE

On February 16, 1995 plaintiffs' decedent, Rosa J. Owolabi, was involved in a fatal collision on Interstate 75 in Atlanta, Georgia when she was forced into another lane by an unknown driver causing her to crash into the median barrier at a mere **21 m.p.h.** The decedent was driving a 1994 Mazda Protegé manufactured by Respondent Mazda Motor Corporation, and sold and distributed in the United States by Respondent Mazda Motor of America, Inc. The belt system was manufactured by Respondent Tokai Rica, and installed in the vehicle by Respondent Mazda Motor Corporation.

The vehicle was equipped with a motorized shoulder belt and manual lap belt. For additional pelvic restraint the vehicle provided knee bolsters and anti-submarining seats. The vehicle **did not** contain an **airbag**. Petitioners' decedent was wearing her passive shoulder belt at the time of the collision, but she was not using her manual lap belt.

Petitioners' decedent bled to death from a severed spleen. Petitioners' expert, Dr. Joseph Burton, a forensic pathologist and biomechanic, opined that had Mrs. Owolabi been wearing a lap belt along with her shoulder belt, she should have survived this accident without serious injury.

This case was brought by the surviving heirs of Rosa J. Owolabi alleging her wrongful death. Petitioners' complaint alleges several distinct theories of liability against Mazda, arising in strict liability, negligence, and warranty. First, is a claim for failure to install an available airbag in the 1994 Mazda Protegé, which all parties agree

is pre-empted in light of this Court's recent ruling in *Geier v. Honda*, 529 U.S. 1913, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000). (Petitioners' Complaint, ¶¶ 18, 29) A second claim is that the motorized shoulder belt and manual lap belt design employed in the 1994 Mazda Protegé was unsafe due to its specific design characteristics. (Petitioners' Complaint, ¶¶ 16, 19) This fact was admitted by Mazda. (Deposition of Muramoto, R-3-45, Exh. 2, pp. 45-46, 63-64, 78-79) Incorporated into the second claim is a third claim that Mazda had a duty to notify the consumer and to recall the seat belt system because of the known safety defects. (Petitioners' Complaint, ¶ 41) The final claim at issue is that Mazda failed to provide an adequate warning of the dangers of the passive shoulder belt being worn without the manual lap belt in place. (Petitioners' Complaint, ¶¶ 17, 28)

The respondents removed the case to the United States District Court for the Northern District of Georgia. The basis for jurisdiction for the United States District Court was diversity jurisdiction and amount in controversy pursuant to 28 U.S.C. § 1332.

During discovery, Mazda admitted its awareness of the dangers of wearing the shoulder belt without the lap belt in place. Hisao Muramoto, a design engineer at Mazda who designed this seat belt system, *repeatedly* acknowledged the dangerous condition of wearing the Mazda Protegé shoulder belt without using the lap belt in various accident scenarios.

Mr. Muramoto stated that the automotive industry generally recognizes that there is a danger of getting neck

injuries from submarining under the shoulder belt without the lap belt, and that these dangers differed with the type of accident, the size of the occupant, the knee bolster performance, and the characteristics of the individual shoulder belt. (R-3-45-Exh. 2, pp. 45-46) Later in the deposition, Mr. Muramoto was emphatic that the use of the Mazda lap belt is *essential*. (R-3-45-Exh. 2, pp. 63-64) Mr. Muramoto also admitted that the shoulder belt alone was not reasonably safe without using the manual lap belt. (R-3-45-Exh. 2, p. 78) Finally, Mr. Muramoto called the manual lap belt in the 1994 Mazda ***essential*** for safety reasons.

> . . . You instructed me to set aside the consideration to meet FMVSS requirements; however, if we are talking about the compliance with FMVSS 208, then we can satisfy those requirements without a lap belt put on; therefore, in that sense you can call that an optional. However, considering that in the real world there are various types of accidents and one trying to use all the restraint system equipped in the vehicle, **then the use of a lap belt is no longer optional but they are** *essential*.

(R-3-45-Exh. 2, p. 79) (Emphasis supplied). In other words, Mazda admits that they pass the crash test criteria, but in real world crashes the system is dangerous and defective in many crash situations.

Dennis Folds, a human factors engineer at Georgia Tech, opined that the warnings contained in the owner's manual and on the sun visor are insufficient for two reasons. The vehicle has a warning on the sun visor and in the owner's manual dealing with seat belt usage. The first allegation is that the warnings fail to adequately

convey to the consumer the dangers of the system when the lap belt is not in use. Second, the warning is not sufficiently conspicuous. While there are a number of warnings in the manual with the proper and universally recognized "WARNING" symbols, the lap belt warnings do not utilize these symbols.

On March 26, 1998, Respondents filed their Motion for Summary Judgment seeking to have all of Petitioners' claims pre-empted. Petitioners filed their Motion for Partial Summary Judgment on April 6, 1998 seeking a ruling that the seat belt system was defective per se due to Respondent's failure to recall a known safety defect.

On February 12, 1999 summary judgment was granted to all respondents by the District Court. The District Court found that Petitioners' claims were impliedly pre-empted by the Federal Motor Vehicle Safety Standards. Petitioners' Motion for Partial Summary Judgment was denied. A Final Judgment dismissing Petitioners' action and granting to Respondents Recovery of Costs from Petitioners was filed On February 12, 1999. (R-5-67-1) The Eleventh Circuit likewise found that Petitioners' claims were pre-empted based upon its prior holding in *Irving v. Mazda*, 136 F.3d 764 (11th Cir. 1998).

REASONS FOR GRANTING THE WRIT

Petitioners believe that the Writ should be granted in accordance with Rule 10(a), Supreme Court Rules, because the Eleventh Circuit has decided an important federal question on pre-emption that is in direct conflict with decisions of the Supreme Court of Texas, the

Supreme Court of Arizona, and the Sixth Circuit Court of Appeals. In addition, the decision of the Eleventh Circuit is in direct conflict with this Court's recent ruling in *Geier v. Honda*, 529 U.S. 1913, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000).

In *Hyundai Motor Company v. Alvarado*, 41 Tex. Sup. Ct. J. 947, 974 S.W.2d 1 (1998) the Supreme Court of Texas was asked to address the identical issue on both express and implied pre-emption with regards to a similarly designed seat belt system.[1] The Supreme Court of Texas ruled that the mere fact that automobile manufacturers were given a choice of designs of belt systems did not insulate them from common law liability for a poor design. They refused to find implied pre-emption.

Likewise, the Supreme Court of Arizona in *Hernandez-Gomez v. Volkswagen of America, Inc., et al.*, 185 Ariz. 509, 917 P.2d 238 (1996), noted that the manufacturers' options were defined in regards to performance criteria not design criteria. The Federal Motor Vehicle Safety Standards do not "mandate a particular design or any specific equipment." *Hernandez-Gomez, supra* at 185 Ariz. 516, 917 P.2d 245. Noting that the Safety Standards were merely minimum standards, they found no pre-emption of plaintiff's claims.

Finally, in a case that involved the identical basic seat belt design, the Sixth Circuit Court of Appeals found no

---

[1] The Hyundai seat belt design employed a passive shoulder belt with knee bolsters and anti-submarining seats. It had no lap belt installed. Plaintiff contended that a lap belt should have been installed.

implied pre-emption of the design defect or warnings claims in *King v. Ford Motor Co.*, 209 F.3d 886 (6th Cir. 2000). Relying on *Collazo-Santiago v. Toyota Motor Corp.*, 957 F. Supp. 349 (D.P.R. 1997), the Court noted that "Compliance with performance criteria does not immunize manufacturers from common law liability arising from any defects in the production or design of their passive restraint systems." *King, supra* at 893.

The Eleventh Circuit ruled the exact opposite on Petitioners' claims in this case. Relying on their previous decision in *Irving v. Mazda Motor Corp.*, 136 F.3d 764 (11th Cir. 1998), they found that both Petitioners' design and warnings claims were impliedly pre-empted. The Eleventh Circuit refused to reconsider the *Irving* decision in light of the Supreme Court recent pronouncements in *Geier v. Honda*, 529 U.S. 1913, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000).

I. ARE PETITIONERS' DESIGN DEFECT CLAIMS AGAINST RESPONDENTS FOR FAILING TO DESIGN A SAFE PASSIVE RESTRAINT SYSTEM PRE-EMPTED?

Petitioners have maintained that *Irving v. Mazda, supra* was wrongly decided and that their claims are not pre-empted. They further believe that this Court's recent ruling in *Geier v. Honda*, 529 U.S. 1913, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000) supports that position. The *Geier, supra* decision substantially undermined the holding in *Irving v. Mazda*, 136 F.3d 764 (11th Cir. 1998) on issues of pre-

emption. *Geier, supra* makes it clear that none of Petitioners' claims are pre-empted with the exception of the failure to install an airbag claim.

The Petitioners contend that the Mazda design of a manual lap belt and passive shoulder belt is inherently dangerous because of the dangers of the design when the manual lap belt is not worn. Petitioners produced testimony from Dr. Richard G. Snyder,[2] one of the early researchers on this subject, as well as former NHTSA engineer Billy S. Peterson, to the effect that a shoulder belt should never be worn without a lap belt. This is due to the inherent dangers of this configuration. There are a significant number of car crashes where this *half-passive* system has actually increased the severity of the injuries.[3]

---

[2] Dr. Snyder authored numerous articles in the 1960s on seat belt designs, including, *Seat Belt Injuries in Impact*, Snyder, Richard G., Crosby, W.M., Young, J.W., Snow, C.C., and Hanson, P., University of Michigan, Ann Arbor: Highway Safety Research Institute (1967), and *Pathology of Trauma Attributed to Restraint Systems in Crash Impacts*, Snyder, Richard G., Snow, Clyde C., Young, Joseph W., Crosby , Warren W., Price, G. Townley. Federal Aviation Administration Office of Aviation Medicine, February 1969, p. 11.

[3] The NTSB concluded: "The potential dangers of dependence on only an upper torso restraint have been known to the medical profession for three decades. In the 1960s the 'diagonal' or shoulder belt was installed in several European automobiles. A Swedish doctor documented three cases of fatal neck injury (two decapitations) of occupants wearing the diagonal safety belt. . . . Occupants can submarine through the shoulder belt and suffer fatal injuries or can eject through the belt and suffer fatal neck injuries or can eject when the door opens and suffer fatal injuries." *NTSB Study on Special Investigations on Automatic Restraints On Passenger Vehicles*, Draft May 23, 1993, pp. 4-2 and 4-3. (R-3-44-Exh. C).

During discovery, Respondents admitted these dangers exist with their seat belt design. (See Deposition of Muramoto)

Rosa Owolabi was wearing the passive shoulder belt, but had not engaged her manual lap belt. Despite the low crash speed,[4] she died of internal injuries received because of the defective design of her restraint.

Petitioners do not contend that any particular type of passive restraint should have been installed by Mazda. Rather, they contend that the passive shoulder belt system as designed by Mazda is defective and dangerous when the manual lap belt is not used, because it provides insufficient pelvic restraint in certain crash situations which leads to an increased risk of serious injuries or death in low speed collisions. Further, they contend that the anti-submarining seats and knee bolsters do not sufficiently overcome the known dangers in the shoulder belt only system and that the Mazda system as designed could only be made safe when used in conjunction with a lap belt. As a safer alternative they propose a passive lap belt should be incorporated into the design to eliminate the dangers associated with non-use of the lap belt.[5]

---

[4] Estimates of her change in velocity (Delta V) at the time of the collision ranged from 21 m.p.h. (Deposition of plaintiffs' expert Dr. Richard Bryan, p. 88, l.11) to 30 m.p.h. (Deposition of defendants' expert Terry Thomas, p. 29, l.5).

[5] Under Georgia law, petitioners were required to set out safer alternative designs available to the manufacturer. *See, Banks v. ICI Americas, Inc.*, 264 Ga. 732, 450 S.E.2d 671 (1994). The alternative passive designs suggested by petitioners included an airbag, a door-mounted three point passive restraint (found in most General Motors vehicles, and numerous other vehicles

Petitioners contend that this cause of action is one of those specifically preserved by the savings clause. Realizing that the Safety Standards are only minimum standards, Congress included the savings clause to encourage safety through common law tort actions. Only in situations where the tort action "stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress" should implied pre-emption be considered. *Geier, supra* at 1921. Rather than standing as an obstacle, this case is one of those cases where the "objective of Congress" is actually promoted by the tort action.

The Supreme Court in *Geier, supra* at 1926, placed weight on the Brief of the United States as Amicus Curiae presenting the Department of Transportation's interpretation of pre-emption. The "Brief of DOT" makes it clear that the phase in of passive restraint options was to encourage the development of new and improved technology. (*Geier, supra,* Brief of DOT, pp. 23-24; Brief of DOT, f.n.21)

> "[T]he Safety Act prohibits state legislatures and administrative agencies from adopting prescriptive safety standards that differ from a federal standard governing the same aspect of performance. It does not, however, necessarily preclude state courts from entering tort judgments that a vehicle was defectively designed with respect to that aspect of performance. This interpretation could create some tension within the

---

at that time), and a motorized shoulder and motorized lap belt. Any one of these permissible passive designs would have solved the defect and saved Rosa Owolabi's life.

> Safety Act, because allowing manufacturers to be held liable for design defects in vehicles that comply with federal standards could run counter to Congress's interest in uniform performance standards. But any tension reflects a congressional compromise between the interests in uniformity and in permitting States to compensate accident victims, embodied both in the savings clause 15 U.S.C. § 1397(k) and in the definition of a federal standard as a "minimum standard" 15 U.S.C. § 1391(2)."

Geier, supra, Brief of DOT, pp. 14-15. The Secretary was emphatic that "state tort law does not conflict with a federal 'minimum standard' . . . merely because state law imposes a more stringent requirement." *Geier, supra,* Brief of DOT, p. 21.

The DOT, in its *Geier* brief, set out several examples of case scenarios that would *not be pre-empted.* Two of those examples are closely analogous to the case at bar. The first example involves 49 C.F.R. § 571.125 (Standard 125) regarding reflective warning devices. The DOT noted that the standard permits several design *options* that meet minimum safety standards.

> "Section 1397(k) [the savings clause] makes clear that compliance with Standard 125 is not a defense to a common law tort claim that the reflective device is defectively designed unless it uses one rather than another of those options. Thus, under our reading, Section 1397(k) has a sensible and important role."

(*Geier, supra,* Brief of DOT, p. 22) Thus, the Secretary states that a common law claim that one permissible design option is superior to another permissible design is

not pre-empted. Petitioners herein do not contend that any particular passive technology must be employed, but they contend that the design used by Mazda was a dangerous and defective design and that superior designs existed.

A second example given by the Secretary was under 49 C.F.R. § 571.105 (Standard 105). Standard 105 allows a manufacturer to meet safety standards by using air-brakes. However, this does not pre-empt a common law claim that the vehicle was defective without the addition of anti-lock brakes. *Geier, supra,* Brief of DOT, p. 21. Again, this example is directly on point in that Petitioner has suggested that the addition of a passive lap belt was a safer alternative to the manual lap belt, since it would increase the use rate of the lap belt portion of the system.

In comparing this case to the examples given by the DOT it is important to realize that, with regard to seat belt designs, NHTSA has never adopted or approved any particular design. The Secretary has always made it perfectly clear that NHTSA did not approve any particular design or type of passive restraint. Rather, they left the particular design options open to encourage improvements in safety performance.

> The automatic occupant protection provisions of FMVSS 208 do not specify that particular technologies, such as automatic belts or airbags, be used to comply with the standard. Rather, the standard requires a level of safety performance that can be met by any technology chosen by the manufacturer. Although safety belts and airbags are the most widely discussed

> technologies, the use of "passive interiors" as a means of compliance is also generating interest.

49 FR 28965. Thus, the Mazda design was not approved or disapproved by NHTSA. Mazda was required to design a restraint that was safe and effective that would be passive and meet certain crash performance criteria. NHTSA took no part in determining what type of restraint should be employed.

The Supreme Court in *Geier, supra* at 1924, stated that one of the goals of the 208 passive restraint requirements was to obtain a mixed fleet, with airbags and various passive belts options. The Court found pre-emption *only* because the failure to install an airbag would frustrate this goal and force an all airbag fleet. It would force the manufacturers to "install airbags rather than other passive restraint systems, such as automatic belts or passive interiors." *Geier, supra* at 1925.

Petitioners' claims in this case would have a different effect. Their claims would force the manufacturers to design a *safer passive restraint* than the one in the 1994 Mazda Protegé. Petitioners' lawsuit seeks to improve the safety performance of the Mazda seat belt system, whether by a three point door mounted passive belt, a motorized shoulder belt with a motorized lap belt, a beltless passive interior design, or even a motorized shoulder belt with knee bolsters that overcome the inherent dangers of the shoulder belt only system.

The purpose of the standard was to obtain a mix of passive devices that "would help develop data on comparative effectiveness, would allow the industry time to overcome the safety problems and the high production

costs associated with airbags, and would facilitate the development of alternative, cheaper, and *safer* passive restraint systems." *Geier, supra* at 1924. (Emphasis supplied) Petitioners' claims are perfectly consistent with "the development of alternative, cheaper, and *safer* passive restraint systems." Petitioners merely seek a safer design than the one in the 1994 Mazda Protegé.

In reality it is *pre-emption* that is a threat to achieving the development of DOT's goals. " . . . [T]he savings clause reflects a congressional determination that occasional nonuniformity is a small price to pay for a system in which **juries not only create, but also enforce, safety standards**, while simultaneously providing necessary compensation to victims." *Geier, supra* at 1920 (emphasis supplied). The lawsuit before the Court is one of those cases specifically contemplated under the savings clause to enforce and *improve* the safety of vehicles. Thus, Petitioners' design defect claims should not have been dismissed as being pre-empted.

II. ARE PETITIONERS' FAILURE TO WARN CLAIMS PRE-EMPTED BY THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS?

The recent holding in *Geier v. Honda*, 529 U.S. 1913, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000) reiterates the need to make a case specific analysis as to each of petitioners' claims, including an independent analysis of the warnings claim separate from the design defect claims. The Court of Appeals dismissed Petitioners' warnings claims as being pre-empted based upon the ruling in *Irving v. Mazda*, 136 F.3d 764 (11th Cir. 1998). However, the *Irving*

Court never made the traditional pre-emption analysis as it related to the warnings claims. Because there are absolutely no warnings requirements in the Federal Motor Vehicle Safety Standards, the warnings claim is clearly not pre-empted. If the court had done the required analysis, they would have concluded that the failure to warn claim was not pre-empted.

A. Failure To Separately Analyze Warnings Claims

Georgia law is clear that failure to warn is a distinct cause of action, separate and apart from the design defect claims. *Chrysler Corp. v. Batten*, 264 Ga. 723, 450 S.E.2d 208 (1994) (holding that sale of the defective product and the failure to warn are separate and distinct causes of action). *See also, Ford Motor Co. v. Stubblefield*, 171 Ga. App. 331, 319 S.E.2d 470 (1984) (Manufacturer could be held liable for both the design defect and the failure to warn of the foreseeable dangers inherent in the design); *Daniels v. Bucyrus-Erie Corp.*, 237 Ga. App. 828, 516 S.E.2d 848 (1999) (design defect claims and failure to warn claims are treated differently).

In this case, Petitioners have alleged separate and distinct claims in their complaint for the design defect and the warnings defect. Petitioners allege two different defects with regards to the warnings. First, they claim the wording of the Mazda warning is insufficient to adequately warn of the serious and life threatening dangers of the passive shoulder belt being worn without the manual lap belt in place. Second, Petitioners allege that the Mazda warning was not sufficiently conspicuous in its

placement in the vehicle as well as the lack of bolding in the owner's manual by use of proper warning symbols.

Relying on *Irving v. Mazda*, 136 F.3d 764 at 769-770 (11th Cir. 1998), the district court dismissed plaintiffs' warnings claims. The Eleventh Circuit likewise found that *Irving, supra* was on point and that all of their claims should be dismissed, including the warnings claims. No separate analysis was ever made of the Petitioners' warning claims.

The flaw in the *Irving* decision is that it failed to make a separate pre-emption analysis required by *Geier v. Honda*, 529 U.S. 1913, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000) with regards to the warning claim. After going through a detailed pre-emption analysis with regards to the design defect claim, the *Irving* Court incorrectly concluded that the design defect claims were pre-empted. However, instead of doing the same analysis for the warnings claim, the *Irving* Court merely stated, "Because Petitioner's defective-design claim is preempted by FMVSS 208, there was no defect about which to warn." Petitioners contend that the Court should have made the same analysis for every claim, including the warnings claims.

Geier, supra reiterated that the reviewing court must make a very narrow and precise focus of what the plaintiffs' claims seek to accomplish, and whether each claim "under the circumstances of the particular case . . . stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress." *Geier, supra* at 1920.

This concept of making a detailed and fact specific analysis as to each claim is nothing new. In just the past decade, the Supreme Court has done this on three occasions, resulting in dismissal of some claims while preserving others. "An actual conflict analysis should be narrow and precise, 'to prevent the diminution of the role Congress reserved to the States while at the same time preserving the federal role.' " *Northwest Cent. Pipeline Corp. v. State Corp. Comm'n*, 489 U.S. 493, 515, 109 S.Ct. 1262, 1277, 103 L.Ed.2d 509 (1989). See, *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992) (The Court examined separately state law damages claims for express warranty, fraud and conspiracy, and warnings); *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 113 S.Ct. 1732, 123 L.Ed.2d 387 (1993) (The Court found the excessive speed claim was pre-empted but the warning device claim was not); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (The warnings claims should not have been pre-empted).

B. The Pre-Emption Analysis

The implied pre-emption analysis that the Eleventh Circuit should have made was specifically outlined in *Freightliner v. Myrick*, 514 U.S. 280, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995).

> "We have found implied conflict pre-emption where it is 'impossible for a private party to comply with both state and federal requirements,' (cits. omitted) or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' "

Freightliner Corp. v. Myrick, supra, 514 U.S. 280, 115 S.Ct. at 1487. First, the Court must determine do petitioners' warnings claims make it "not possible for [Mazda] to comply with both federal and state law . . . ?" *Freightliner Corp. v. Myrick,* 514 U.S. 280, 115 S.Ct. 1483, 1488 (1995). Second, do the warnings claims "frustrate 'the accomplishment and execution of the full purposes and objectives of Congress?' " *Freightliner Corp. v. Myrick,* 514 U.S. 280, 115 S.Ct. 1483, 1488 (1995).

1. First Prong

First, do plaintiffs' warnings claims make it impossible for Mazda to comply with both federal and state law? *Freightliner Corp. v. Myrick,* 514 U.S. 280, 115 S.Ct. 1483, 1488 (1995). Clearly, the answer is "no". The only mention of warnings in the regulations is the requirement in FMVSS 208 S7.3 (49 C.F.R. § 571.208 S7.3) of a 4-8 second chime. The regulations are silent as to any regulations as far as written warnings for passive belts. Thus, the warnings claims by Petitioners cannot conflict with regulations that do not exist.

It is noteworthy that NHTSA has chosen to require certain warnings language in other areas. The NHTSA adopted specific sun visor airbag warning language that must accompany all cars equipped with an airbag. FMVSS 208 S4.5.1(b), 49 C.F.R. § 571.208 S4.5.1(b). *See, Fisher v. Ford Motor Company,* 224 F.3d 570 (6th Cir. 2000). (The warnings claims were pre-empted because plaintiff sought to require the manufacturer to add language on

the sun visor that was different than the exclusive language adopted by NHTSA.) However, NHTSA has never adopted such regulations with regards to passive belts.

2. Second Prong

It is equally clear that the second prong of the implied pre-emption analysis dictated by *Freightliner* in this case leads to the conclusion that the Petitioners' claims are not pre-empted. Does the lawsuit "frustrate" the accomplishment and execution of the full purposes and objectives of Congress? Again, the answer is "no". Instead, plaintiffs' warnings claims promote the objectives of Congress.

The objectives of Congress under the Safety Act were to *provide safer cars, reduce injuries and save lives* in automobile accidents. *Freightliner Corp. v. Myrick*, 514 U.S. 280, 115 S.Ct. 1483, 1485 (1995). *See also, Perry v. Mercedes Benz of North America, Inc.*, 957 F.2d 1257 (5th Cir. 1992). While Federal Motor Vehicle Safety Standard 208 does not specify any particular design of automatic belt, it does make it clear that the purpose of the regulations is to provide a reasonable degree of occupant protection in foreseeable crash situations. Standard 208 S2 states in pertinent part:

> *Purpose*. The purpose of this standard is to reduce the number of deaths of vehicle occupants, and the severity of injuries, by specifying vehicle crashworthiness requirements. . . .

49 C.F.R. § 571.208 S2.

Petitioners in this case have alleged that Mazda knew there was a danger in wearing the shoulder belt without

the lap belt which would actually increase the risk of serious injury or death in low speed crashes, such as the one that killed Rosa Owolabi. Mazda has admitted this through Mr. Muramoto.

Only in situations where the tort action "stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress" should implied pre-emption be considered. *Geier, supra* at 1920. Rather than standing as an obstacle, the warnings claims would serve to improve the performance of the safety restraint system by encouraging use of the manual lap belt. *See generally, King v. Ford Motor Co.*, 209 F.3d 886 (6th Cir. 2000) (warnings claims not pre-empted in passive belt case).

C. The DOT Interpretation

The Supreme Court in *Geier, supra* at 1925, placed weight on the Brief of the United States as Amicus Curiae presenting the Department of Transportation's interpretation of pre-emption. The "Brief of DOT" makes it clear that the phase in of passive restraint options was to encourage the improvement of new and improved technology. (*Geier, supra*, Brief of DOT, pp. 23-24; Brief of DOT, f.n.21) The Secretary in his brief went on to say:

> In cases in which tort liability does not conflict with a federal standard, Section 1397(k) makes it clear that compliance with the standard does not immunize a manufacturer from liability. Those cases can arise frequently, since state tort law does not conflict with a federal "minimum standard" (15 U.S.C. § 1391(2))

> merely because state law imposes a more stringent requirement.

(*Geier, supra,* Brief of DOT, p. 21).

Would Petitioners' warnings claims frustrate the purpose of improving safety restraint technology? Certainly not. By Mazda's own admissions, they would improve the performance of the Mazda belt in real world crash situations.

A search of the NHTSA interpretive files shows that the agency has previously been asked to address an almost identical claim. In a letter dated August 7, 1996, Chief Counsel Samuel J. Dubbin was asked about warnings requirements for a motorized passive belt system with a manual lap belt. Dubbin concluded that FMVSS did not prohibit **"a sun visor warning . . . which would employ colors and signal words and would communicate the nature of the hazard and potential consequences associated with not wearing the lap belts,"** provided the vehicle was not equipped with an airbag. (Note: the vehicle in this case was not equipped with an airbag and thus this interpretation would apply to the case *sub judice.*)

"When a court reviews an agency's construction of the statute which it administers, . . . great deference is given to an agency's interpretation of the statute it is charged to administer." *Udall v. Tallman,* 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965). Because the Eleventh Circuit's holding in this case as well as the holding in *Irving, supra* clearly conflict with NHTSA's interpretation of FMVSS 208, this Court should grant certiorari and reverse the holding as it relates to warnings claims.

III. CAN THERE BE PRE-EMPTION WHEN THE MANUFACTURER ADMITS THAT THE SEAT BELT SYSTEM POSES A SAFETY HAZARD?

Finally, Petitioners contend that it was never Congress' intent to insulate a manufacturer from liability for an admittedly dangerous product merely because it meets a minimum safety standard. Despite raising this below, the Eleventh Circuit never addressed this issue. Petitioners believe that Mazda's admission of a design defect is important in the pre-emption analysis. Since the goal of Congress was to save lives and promote safety, it is unimaginable that Congress envisioned a system where a manufacturer could sell an admittedly dangerous vehicle and hide behind the doctrine of pre-emption.

Hisao Muramoto, a design engineer at Mazda who designed this seat belt system, *repeatedly* acknowledged the dangerous condition of wearing the Mazda Protegé shoulder belt without using the lap belt in various accident scenarios, calling the lap belt "essential" for safety reasons. Mazda admits that they pass the crash test criteria, but in real world crashes the system is dangerous and defective in many crash situations.

The Secretary of DOT did not intend to allow a knowingly dangerous design just because the design can pass minimum crash performance criteria. In fact, both Congress and the Secretary had expressed a contrary intent. Both 15 U.S.C. § 1411 and 49 C.F.R. § 573.5 place an affirmative duty on the manufacturer to notify each owner, the dealers, as well as the NHTSA of any safety related defect, and to recall any product where "a manufacturer – (1) obtains knowledge that any motor vehicle

or item of replacement equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety. . . . " 15 U.S.C. § 1411.

The Act requires notification and recall under two separate and distinct circumstances. The first condition is if a manufacturer determines that there is a defect that relates to motor vehicle safety, and the second is if the manufacturer determines that the vehicle does not comply with Safety Standards. **Thus, Congress and the NHTSA contemplated that a vehicle can pass "minimum" safety standards and still be defective.** A recall is mandated in either event.

Even assuming plaintiffs' general design defect claims are pre-empted, their claims that the specific Mazda design is dangerous are not pre-empted. The Supreme Court in *Geier, supra* at 1928, acknowledged that even in situations where failure to install airbag claims might be pre-empted, special design considerations might "escape pre-emption." Similarly, where a manufacturer has acknowledged the dangerousness of its own design, there would be no pre-emption, even if pre-emption might otherwise exist. Mazda is in essence admitting that there are special design considerations that would preclude them from using the belt type that they have chosen.

The NHTSA explained the relationship between the pre-emption clause and the savings clause as follows:

> Congress provided that mandatory federal safety standards are only "minimum standard[s]," 15 U.S.C. § 1391(2), and it interposed

> no barrier to manufacturers exceeding those standards voluntarily, either nationwide or in particular States. . . . Congress . . . decided to tolerate [the tension between Federal regulations and common law causes of action], in a compromise between the federal interest in uniformity and the States' traditional interest in compensating victims of motor vehicle accidents, an area in which the States have long measured defendants' conduct against standards of care articulated in the common law adjudication of tort claims."

Freightliner Corp. v. Myrick, 514 U.S. 280, 115 S.Ct. 1483, 1488 (1995), Brief for the United States as Amicus Curiae supporting Respondents, pp. 17-18. The case *sub judice* presents the perfect example of why Congress intended that common law liability remain intact. The Mazda passive system can pass the crash tests and yet still provide a very dangerous situation for occupants in low speed collisions because it provides inadequate pelvic restraint. Clearly, this lawsuit does not frustrate the intent of Congress or the regulations! **This lawsuit actually promotes the intent of Congress and NHTSA.**

The lower Court's finding of pre-emption and the refusal to address this issue would allow Respondents to **insulate themselves** from liability based upon the manufacturer's choice of seat belt designs, despite the safer alternatives available to them. This insulation from common law liability is clearly not the intent of the savings clause or the Federal Motor Vehicle Safety Standards. As this Court stated in *Medtronic, Inc. v. Lohr*,

> Medtronic's argument is not only unpersuasive, it is implausible. Under Medtronic's view

> of the statute, Congress effectively precluded state courts from affording state consumers any protection from injuries resulting from a defective medical device.

Medtronic, Inc. v. Lohr, 518 U.S. 470, 116 S.Ct. 2240 at 2251 (1996). Likewise, Mazda has asked the courts to preclude the state courts from affording consumers any protection from injuries from an admittedly defective seat belt system, and so far the Courts have obliged.

CONCLUSION

For the reasons set forth above, Petitioners ask this Court to grant certiorari on these important questions on pre-emption.

Respectfully submitted,

JOHNSON, WORD & SIMMONS

GERALD P. WORD
(Ga. Bar No. 776375)
Counsel of Record
for Petitioners

306 Tanner Street
P.O. Box 521
Carrollton, GA 30117
(770) 830-1323

APPENDIX

Page

1. Opinion of the United States Court of Appeals for the Eleventh Circuit dated August 18, 2000... App. 1

2. Order of the United States District Court for the Northern District of Georgia, Atlanta Division filed 2/12/99..... App. 10

3. Denial of Rehearing of the United States Court of Appeals for the Eleventh Circuit filed October 17, 2000..... App. 28

4. 15 U.S.C. § 1392(d).....App. 30

5. 15 U.S.C. § 1397(k).....App. 30

6. 15 U.S.C. § 1411..... App. 30

7. 49 C.F.R. § 571.208 S4.1.2.1.....App. 31

8. 49 C.F.R. § 573.5..... App. 32

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-8310

DWAYNE JAMES,
JEWELL A. JAMES,
LOUISE KARTER,

Plaintiffs-Appellants,

versus

MAZDA MOTOR CORPORATION,
POPE CHEVROLET, INC.,
TOKAI RICA CO., LTD.,
JOHN DOE,
MAZDA MOTOR OF AMERICA, INC.

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

Aug. 18, 2000.

Before: TJOFLAT, MARCUS and KRAVITCH, Circuit Judges.

TJOFLAT, Circuit Judge:

The sole issue presented in this appeal is whether the Supreme Court's decision in *Geier v. American Honda Motor co., Inc.*, ___ U.S. ___, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000), casts doubt on the viability of this circuit's decision in *Irving v. Mazda Motor Corp.*, 136 F.3d 764 (11th

Cir.), *cert. denied*, 525 U.s. 1018, 119 S.Ct. 544, 142 L.Ed.2d 452, (1998). We hold that *Irving* is still good law.

I.

A.

Plaintiffs' decedent, Rosa J. Owolabi, was killed on February 16, 1995, when the car she was driving was forced off Interstate 75 in Atlanta, Georgia, by an unidentified driver,[1] and crashed into the freeway median. Owolabi's car was a 1994 Mazda Protege, manufactured by defendant Mazda Motor Corporation, and distributed in the United States by defendant Mazda Motor of America (collectively "Mazda").[2] The 1994 Protege employed a passive (automatic) two-point shoulder belt, and a manual lap belt.[3] Owolabi was not wearing her lap belt at the time of the accident.

B.

This wrongful death action began in the Superior Court of Fulton county, Georgia;[4] Mazda removed it to

---

[1] Plaintiffs named the unidentified driver, "John Doe," as a defendant and asserted a negligence claim against "him." John Doe has never been identified, has never been served with process, and has not made an appearance in this lawsuit.

[2] Plaintiffs also named as defendant Tokai Rica co., which manufactured the seat belt system used in the 1994 Protege. For simplicity, we include Tokai Rica within the term "Mazda".

[3] The 1994 Protege did not have an airbag.

[4] See Ga.Code Ann. § 51-4-2(a) (1999) ("The surviving spouse or, if there is no surviving spouse, a child or children,

the district court following the service of process. The plaintiffs' complaint contained five counts. Each count alleged that the 1994 Protege's manual lap belt had been defectively designed and that Mazda had negligently failed to warn consumers that the Protege was dangerous unless the manual lap belt was worn, and sought compensatory and punitive damages on a different theory of recovery.[5] Count one was based on strict tort liability; count two on negligence; count three on breach of an express warranty; count four on breach of an implied warranty of fitness; and count five, a second negligence theory, on breach of a duty to notify consumers of the Protege's defect.

After the parties joined issue, Mazda moved for summary judgment, claiming that plaintiffs' common law actions were preempted by Federal Motor Vehicle Safety Standard ("FMVSS") 208, 49 C.F.R. § 571.208 (1999) (enacted under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, originally 15 U.S.C. § 1381 et seq. (1988 ed.), now codified as amended at 49

---

either minor or suit juris, may recover for the homicide of the spouse or parent the full value of the life of the decedent, as shown by the evidence."); id § 51-4-5(b) ("[T]he personal representative of the deceased person shall be entitled to recover for the funeral, medical, and other necessary expenses resulting from the injury and death of the deceased person."). The plaintiffs are Owolabi's children, Dwayne and Jewel James, and the administratrix of Owolabi's estate, Louise Carter.

[5] the complaint also presented a sixth "count," for punitive damages. That count did not, however, assert a separate theory of liability; it simply incorporated the first five counts of the complaint.

U.S.C. §§ 30101-30169 (1994 & Supp. II 1998)). The district court granted Mazda's motion.[6] We affirm.

II.

A.

In *Irving v. Mazda Motor corp*, 136 F.3d 764 (11th Cir.1998), we encountered the theories of recovery the complaint presents in this case. The facts in *Irving* were that

> [p]laintiff Juliette Irving filed suit against Defendant Mazda Motor Corporation on behalf of her daughter, Bonita Irving. bonita was killed in a single-car accident while driving a 1990 Mazda MX-6. After her daughter's death, Plaintiff filed this suit claiming that the seat belts in the MX-6 were defectively designed and that Mazda failed to warn consumers adequately of the risks of not utilizing all portions – particularly the manual lap belt portion – of the safety belt system.

---

[6] In its order granting Mazda summary judgment, the district court did not specifically discuss the pending negligence claim against John Doe, *see supra* n. 1, nor had the court previously dismissed John Doe pursuant to Fed.R.Civ.P. 4(m) ("If service . . . is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant. . . . "). since it is clear that John Doe was never in any sense "before the court," we do not consider his claim still pending for purposes of the final judgment rule, 28 U.S.C. § 1291 (1994); we construe the court's order granting defendants summary judgment to have disposed of plaintiffs' claim against him without prejudice.

> The safety belt system used in the Mazda MX-6 included a two-point passive shoulder restraint (automatic shoulder belt) with a manual lap belt. This kind of restraint system was one of three options provided to car manufacturers by FMVSS 208. Plaintiff contends the design represented by this option was defective.

We concluded under those facts that (1) Irving's common law "defective-design claim is not expressly preempted by [FMVSS 208]," id. at 768; (2) Irving's "suit against Defendants for their exercise of an option provided to Defendants by FMVSS 208 conflicts with federal law and, thus, is [impliedly] preempted," id. at 769; and (3) Irving's "failure-to-warn claim – which is, in this case, dependent on the preempted defective-design claim – was properly dismissed [because it is also preempted]," id. at 770.

In this case, the district court concluded, in its order granting Mazda summary judgment, that the passive two-point shoulder belt and manual lap belt in the 1994 Protege (which was a similar system to the one used in the 1990 Mazda MX-6) complied with FMVSS 208. As a result, the court found the present case "virtually indistinguishable" from *Irving*, and on that basis granted Mazda summary judgment.

As an initial matter, we find no error in the court's conclusion that the passive two-point shoulder belt and manual lap belt complied with FMVSS 208.[7] Moreover,

---

[7] Referring to the plaintiff's negligent failure to warn claim, the district court, in its order granting Mazda's motion for summary judgment, said this: "Plaintiffs do not allege that the

we agree with the district court that this case is on all fours with *Irving*.[8] If *Irving* is still good law, plaintiffs' appeal fails. Our only task on appeal, therefore, is to determine if *Irving* is good law. We conclude that it is.

B.

First, plaintiffs argue that *Irving* was not good law when it was decided, because it conflicted with prior circuit precedent, namely *Myrick v. Freuhauf Corp.*, 13 F.3d 1516 (11th Cir.1994), aff'd 514 U.S. 280, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995), and *Doyle v. Volkswagenwerk Aktiengelellschaft*, 114 F.3d 1134 (11th Cir.1997) (*Doyle II*). See *Cohen v. Office Depot, Inc.* 204 F.3d 1069, 1072 (11th Cir.2000) ("[W]here two prior panel decisions conflict we are bound to follow the oldest one."). Second, plaintiffs argue that the Supreme Court's decision in *Geier*, 120 s.Ct. 1913, abrogates *Irving's* implied preemption analysis. we consider these two arguments in order.

1.

Plaintiffs argue that the *Irving* court's analysis of implied preemption was incorrect because it conflicted with *Myrick v. Freuhauf Corp.*, 13 F.3d 1516. In *Myrick*, 13

Protege failed to comply with federal law requirements for warning label placement regarding proper seat belt use."

[8] The district court held that all of the claims contained in the five counts of plaintiffs' complaint stand or fall on proof that the Protege's safety belt system was defective in the first instance. We agree: if plaintiffs' defective design claim is preempted, so too are these claims.

F.3d at 1518, we concluded that "a common law tort for failure to install antilock brakes in a tractor-trailer is [not] preempted by the National Traffic and Motor Vehicle Safety Act." In doing so we held that "where . . . there is an express preemption provision, which constitutes a reliable indicium of congressional intent, implied pre-emption analysis has no place." Id. at 1523. On writ of certiorari, the Supreme Court affirmed the judgment, but disagreed with the reasoning; it found our implied preemption analysis "without merit." *Freightliner Corp. v. Myrick*, 514 U.S. at 287, 115 s.Ct. at 1487. The *Irving* court recognized this. In its discussion of implied preemption it noted that when "the Supreme Court reviewed *Myrick* on appeal . . . [it] affirm[ed] the outcome, [but] stressed that implied preemption is possible despite the presence of an express preemption clause." *Irving*, 136 F.3d at 767 n. 1. In other words, the *Irving* court engaged in the correct preemption analysis.

As a second argument, plaintiffs contend that *Doyle II*, 114 F.3d 1134, conflicts with *Irving*. This is not correct. In *Doyle II*, plaintiff was injured while driving a 1989 Volkswagen Jetta, which had a passive shoulder belt but no lap belt. The district court granted defendant Volkswagenwerk Aktiengelellschaft (which manufactured the 1989 Jetta) summary judgment on the ground that the Jetta "complied with the applicable federal standards, notwithstanding the absence of a lap belt" and that "Georgia law . . . does not hold automobile manufacturers to a higher standard than federal requirement." Id. at 1135. The only question on appeal, therefore, was whether this was a correct statement of Georgia law (based on a certified question to the Georgia Supreme

Court, *see Doyle v. Volkswagenwerk Aktiengelellschaft*, 81 F.3d 139 (11th Cir. 1996) (*Doyle I*), we concluded that it was not). Since "the district court found it unnecessary to reach the preemption issue," we did not consider preemption. *Doyle II*, 114 F.3d at 1135.[9] *Doyle II*, therefore, left open the question that we decided in *Irving*.

2.

Since the district court's grant of summary judgment, the Supreme Court has decided *Geier v. American Honda Motor Co.*, ___ U.S. ___, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000). *Geier* is a so-called "no airbag case" in which the plaintiff sued an automobile manufacturer for failure to install an airbag. The Supreme Court held that this claim is not expressly preempted by FMVSS 208, but is impliedly preempted by FMVSS 208 because a common law action based on the failure to install an airbag "actually conflicts with FMVSS 208." Id. 120 S.Ct. at 1922. In supplemental briefing to this court, plaintiffs argue that "*Geier* substantially undermines the holding in *Irving* . . . on issues of preemption."

We are not sure that plaintiffs have read the same *Geier* opinion that we have read. The Supreme Court made clear that, despite a savings clause in the National

---

[9] On remand, the district court found that Doyle's claims were preempted. *Doyle v. Volkswagenwerk Aktiengesellschaft*, No. 91-CV-1296A-JEC (N.D. Ga. Sept. 29, 1999). The parties appealed to this court, and on June 30, 2000, we granted the parties' joint motion to dismiss the appeal with prejudice. *Doyle v. Volkswagenwerk Aktiengesellschaft*, No. 98-9453 (11th Cir. June 30, 2000) (unpublished).

Traffic and Motor Safety Act, 15 U.S.C. § 1397(k) (1988 ed.) (now codified at 49 U.S.C. § 30103(e) (1994)), courts should apply normal implied preemption principles to determine if a state common law action "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. 120 S.Ct. at 1921 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)). This is exactly the analysis used by the *Irving* court:

> The existence of an express preemption clause does not necessarily preclude the presence of implied preemption. *Freightliner Corp. v. Myrick*, 514 U.S. 280, 286-90, 115 S.Ct. 1483, 1487-88, 131 L.Ed.2d 385 (1995). Thus, if Plaintiff's state law claim conflicts with FMVSS 208 or if her claim would hinder Congress's objectives in passing the Act, the state law will be preempted.

Irving, 136 F.3d at 768. Since *Irving* is not in conflict with *Geier*, or any of our previous decisions, we are bound to follow it. The district court, therefore, correctly granted Mazda summary judgment.

III.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DWAYNE JAMES, JEWEL A. JAMES, a minor by next friend LOUISE KARTER, and LOUISE KARTER as Administratrix of the Estate of ROSA J. OWOLABI, Plaintiff vs. MAZDA MOTOR CORPORATION MAZDA MOTOR OF AMERICA, INC. POPE CHEVROLET, INC., TOKAI RICA CO., LTD., and JOHN DOE, Defendants	CIVIL ACTION FILE NO. 1:96-CV-2356-WBH

ORDER

Before the Court are defendants' Motion for Summary Judgment [39-1] and plaintiffs' Motion for Partial Summary Judgment [44-1]. Plaintiff Dwayne James and Louise Karter brought this suit on behalf of decedent Rosa J. Owolabi, who was killed in an automobile accident, alleging that the restraint system in the 1994 Mazda Protege that Owolabi was driving at the time of her accident was defectively designed and that defendants failure to warn of the dangers associated therewith. For the reasons discussed below, the Court grants defendants' motion for summary judgment.

I. BACKGROUND

On February 16, 1995, Owolabi was killed in a car accident while driving her 1994 Mazda Protege along Interstate 75 in Atlanta, Georgia. The safety features used in her car included a two-point passive-restraint shoulder belt, knee bolsters, and a manual lap belt. Defendant Tokai Rica Company, Ltd. manufactured the safety belts used in the car. At the time of the accident, Owolabi was wearing the passive-restraint shoulder belt, which automatically comes across the driver's shoulders and chest when the driver's door is closed, but not the manual lap belt. Plaintiffs allege that had Owolabi also been wearing the lap belt, she would have survived the accident.

II. DISCUSSION

Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966 (the "Safety Act") for the purpose of reducing fatalities and injuries caused by traffic accident.[1] 49 U.S.C. § 30101. Congress gave the Secretary of Transportation authority to promulgate motor vehicle standards that are "practicable [and] meet the need for motor vehicle safety." § 30111(a). The Secretary delegated this authority to the National Highway Transportation Safety Administration ("NHTSA"), 49 C.F.R. § 501.2, which promulgated the Federal Motor Vehicle Safety Standards ("FMVSS"), 49 C.F.R. § 571 *et seq.* Defendants contend that the Protege's restraint system fully

---

[1] The Safety Act was recodified from Title 15 to Title 49 of the United States Code in 1994.

complies with all federal safety standards and that plaintiffs' claims are preempted as a result.

A. Preemption

Federal law may preempt state law expressly, impliedly, or through field preemption whereby federal laws or regulations so extensively regulate a particular area that it is clear that Congress intended to control the subject in its entirety. *See Cipollone v. Ligget Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 2617, 120 L. Ed. 2d 407 (1992). Defendants argue that in the instant case, state law is impliedly preempted.

The substantive facts and allegations in the case at bar are virtually indistinguishable from those in *Irving v. Mazda Motor Corp.*, 136 F.3d 764, 768 (11th Cir.), *cert. denied*, 119 S.Ct. 544 (1998). In that case, the driver of a 1990 Mazda MX-6 was killed in a car accident and, as here, the vehicle was equipped with an automatic two-point shoulder belt and a manual lap belt. *Id* at 766. There, the decedent's mother brought suit against Mazda, claiming that the restraint system was defectively designed and that Mazda failed to warn consumers of the dangers associated with wearing the shoulder belt without the lap belt. *Id*. The Eleventh Circuit held that "common law claims that two-point passive shoulder belts, paired with manual lap belts, constitute inherently a design defect" were impliedly preempted by a provision of FMVSS 208[2] not applicable to this case.

---

[2] FMVSS 208 and its various subsections are found at 49 C.F.R. § 571.208.

Plaintiffs argue that *Irving* is wrongly decided and that, regardless, under *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981), prior case law directly at odds with it controls until overruled by an *en banc* decision. While plaintiffs cite a correct rule of law regarding precedent, in this case, the United States Supreme Court expressly rejected the reasoning upon which the earlier decision rested. In *Myrick v. Freuhauf*, 13 F.3d 1516 (11th Cir. 1994), the Eleventh Circuit held that because the Safety Act expressly preempted some but not all common law claims,[3] a court is foreclosed from finding that congress also intended implied preemption. *Id* at 1521. On appeal, the Supreme Court found the Eleventh Circuit's reasoning that implied preemption is precluded where an express exemption clause exists to be "without merit." In *Freightliner corp. v. Myrick*, 514 U.S. 280, 287-88, 115 S.Ct. 1483, 1487, 131 L.Ed.2d 385 (1995). Thus, this Court is bound by *Irving*; should the court find that defendants have complied with federal regulations, plaintiffs' design defect claim is preempted. Although the Mazda in *Irving* utilized a safety system identical to the one at issue here, because it was manufactured under a subsection of FMVSS 208 not applicable to this case, *Irving* does not automatically preclude plaintiffs' claim. In fact, plaintiffs

---

[3] The Safety Act expressly preempts any state laws regarding "motor vehicle safety standard[s]" except where a "standard is identical to the standard prescribed under this chapter." 49 U.S.C. § 30103(b)(1). However, the Safety Act also contains a savings clause, providing that "compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." *Id* at § 30103(e).

argue that the Protege does not comply with either the Safety act or the federal safety standards, and, as such, their claim cannot be preempted. Therefore, the Court must next examine whether the Protege safety system satisfies federal law.

B. Compliance with Federal Laws and Regulations

1. The Safety Act.

Plaintiffs first argue that the Protege's automatic shoulder harness and manual lap belt configuration is not a "belt system" as that term was defined in the 1974 version of the Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1394, et seq. Under § 1410(b)(2)(B), NHTSA was prohibited from promulgating any motor vehicle safety standard that permitted manufacturers to comply "by means of an occupant restraint system other than a belt system." A belt system was defined in § 1410(f)(2) as "an occupant restraint system consisting of integrated lap and shoulder belts. . . . " Plaintiffs are correct that the Protege's non-integrated shoulder and lap belt configuration does not qualify as a belt system under § 1410(f)(2); however, it does not follow that the Protege's system is therefore in violation of the Safety Act. § 1410(b)(3)(B) furnishes relief from the § 1410(b)(2) belt system requirement by providing that the requirement "shall not apply to a Federal motor vehicle standard which the Secretary elects to promulgate in accordance with the procedure specified in subsection (c) of this section. . . . " As discussed below, the Secretary of Transportation exercised this right and permitted manufacturers to design and install automatic belt systems that deviate from

§ 1410(b)(2). Thus, as long as the Protege's safety configuration was constructed in accordance with the appropriate procedures, the mere fact that the belt configuration is not a belt system under § 1410 does not prevent it from complying with the Safety Act. To determine if the Protege is legitimately exempt, the Court must examine whether it conforms to the FMVSS.

2. Federal Motor Vehicle Standards.

Plaintiffs argue that defendants' two-point automatic shoulder harness and manual lap belt system does not comply with FMVSS 208 S4.1.4. After conducting an extensive review of the applicable standards, relevant case law, and the informal opinions of the NHTSA, the Court disagrees. The 1994 Mazda Protege at issue here was manufactured on or after September 1, 1989, but before September 1, 1996, and, pursuant to FMVSS 208 S4.1.4, its restraint system must comply with the requirements of FMVSS 208 S4.1.2.1. This provision provides, in relevant part, that the front seats of a passenger car must not only meet the appropriate frontal crash protection requirements but must also

> (c) Either. (1) Meet the lateral crash protection requirements of S5.2 and the rollover crash protection requirements of S5.3 by means that require no action by vehicle occupants; or
>
> (2) at each front outboard designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3, and that meets the requirements of S5.1 with front test dummies as required by S5.1, restrained by the Type 1 or

> Type 2 seat belt assembly (or the pelvic portion of any Type 2 seat belt assembly which has a detachable upper torso belt) in addition to the means that require no action by the vehicle occupant.

FMVSS 208 S4.1.2.1 (a)-(c).

By providing an automatic belt, as allowed under FMVSS 208 S4.5.3, Mazda chose to comply with subsection (c)(2). FMVSS 208 S4.5.3 allows manufacturers to substitute an automatic belt system in lieu of the seat belt assembly otherwise required by FMVSS 208 S4.1.2.1(c)(2):

> *Automatic Belts.* Except as provided in S4.5.3.1, a seat belt assembly that requires no action by vehicle occupants (hereinafter referred to as an "automatic belt") may be used to meet the crash protection requirements of any option under S4. and in place of any seat belt assembly otherwise required by that option.

FMVSS 208 S4.5.3. Plaintiffs contend that the Protege's automatic shoulder harness, knee bolsters, and manual lap belt restraint system does not constitute a seat belt assembly and thus fails to meet S4.5.3, and consequently S4.1.2.1(c)(2). Defendants disagree and argue that, even discounting the manual lap belt, the passive shoulder restraint and knee bolster configuration satisfies FMVSS demands.

a. Is the Protege configuration an automatic seat belt assembly?

Plaintiffs initially argue that the Protege's restraint system is not a "seat belt assembly that requires no action

by the occupants," as required by S4.5.3, because it provides insufficient restraint "in the real world" unless the occupant engages the manual lap belt. Regardless, however, of any real world inadequacies inherent in the Protege safety configuration, if Mazda complied with federal regulations, a design defect claim is preempted. S4.5.3 requires that the system "meet the crash protection requirements of any option under S4" and, in this case, specifically the requirements of S4.1.2.1. Plaintiffs do not present evidence suggesting the Protege's automatic shoulder belt and knee bolster system fails to satisfy these requirements,[4] and, consequently, no support exists for finding that the shoulder harness is not an automatic belt under S4.5.3.

Plaintiffs next argue that the shoulder belt – knee bolster configuration cannot be an automatic belt assembly because it does not provide pelvic support. Pursuant to S4.5.3., the car manufacturer must provide a "seat belt assembly" that requires no action by the occupants. And, under FMVSS 209[5], a seat belt assembly is defined as "any strap, webbing, or similar device designed to secure a person in a motor vehicle in order to mitigate the results of any accident." FMVSS 209 S3. Plaintiffs do not dispute that the Protege's automatic shoulder belt satisfies this broad definition but, instead, contend that in addition the automatic belt must contain an integrated

---

[4] Indeed, Plaintiffs concede that the Protege's restraint system "met the performance criteria of FMVSS crash tests." (Pls.' St. of Und. Mat. Facts at Par.2.)

[5] FMVSS 209 and its subsection are found at 49 C.F.R. § 571.209.

pelvic restraint pursuant under FMVSS 209 S4.1(b) and FMVSS 208 S4.5.3.4. FMVSS 209 S4.1(b) mandates that "a seat belt assembly shall provide pelvic restraint whether or not upper torso restraint is provided." Because the Protege's shoulder belt and knee bolster configuration does not afford pelvic restraint, were the Protege subject to FMVSS 209 S4.1(b), it could not be considered a seat belt assembly under FMVSS 209 S4.5.3 and, thus, would not conform to federal law.

The flaw in plaintiffs' argument, however, is that "automatic seat belts complying with FMVSS 208, with certain exceptions, are exempt from the requirements of FMVSS 209." *Montag v. Honda.* 75 f.3d 1414, 1418 (10th Cir. 1996), *cert. denied.* 117 S.Ct. 61, 136 L.Ed.2d 24 (1996). To reach that conclusion, a court must begin with S4.5.3.4, which provides that:

> An automatic belt furnished pursuant to S4.5.3 that is not required to meet the perpendicular frontal crash protection requirements of S5.1 shall conform to the webbing, attachment, hardware, and assembly performance requirements of Standard 209.

FMVSS 208 S4.5.3.4. "The implication of this regulation is that its inverse also applies: automatic seat belts which must meet the crash protection requirements of Standard 208 S5.1[6] are not required to conform to" FMVSS 209's requirements for webbing, attachment, hardware, and

---

[6] FMVSS 208 S5.1 pertains to testing parameters for a frontal barrier crash test, in which a car traveling at speeds up to 30 m.p.h. is driven into a stationary barrier that has been placed perpendicular to the car's line of travel.

assembly performance. *Montag*, 75 f.3d at 1418. Plaintiffs argue that by its very language, S4.5.3.4 exempts only the Protege's webbing, attachment, hardware, and assembly performance from FMVSS 209. And, because pelvic restraint does not fall into any of these four exempted categories, plaintiffs assert that the Protege's belt configuration therefore fails to satisfy FMVSS S4.5.3.

However, S4.5.3.4 deals only with belts that are *not* required to meet S5.1. by meeting S5.1's frontal crash test, FMVSS 208 S4.5.3.4 does not apply to Protege's shoulder belt and knee bolsters. Thus, this Court agrees with the *Montag* court's reasoning that interpreting S4.5.3.4 to require automatic belts that satisfy S5.1 to also satisfy FMVSS 209 creates an internal inconsistency. Regulation FMVSS 209 addresses technical niceties for each component of a seat belt, and its subsection S4.1(b) specifically addresses pelvic restraint. Reading S4.5.3.4 to apply to the general condition of pelvic restraint under S4.1(b) but not requiring that it meet the specifics of FMVSS 209 is illogical.

The history of the provisions as well as NHTSA informal letters on the subject support the Court's interpretation. As plaintiffs point out, the original version of S4.5.3 provided that automatic belts must conform to the webbing, attachment hardware, and assembly performance requirements of FMVSS 209. S4.5.3 was amended, and S4.5.3.4 added, when a party requested that NHTSA exempt these parameters for automatic belts from FMVSS 209. The NHTSA accepted the argument that manufacturers should have the freedom to design an automatic belt system suited to the design of the vehicle and "decided that relief from Standard 209 should be afforded

if a passive belt is capable of meeting the occupant crash protection requirements of S5.1 in a frontal and perpendicular impact. . . . " Federal Motor Vehicle Safety Standards, 36 Fed. Reg. 23725 (1971). As a result, FMVSS 208 S4.5.3.4 was enacted. And, in two informal interpretive letters,[7] NHTSA, quoting the same sentence from its 1971 federal regulation that led to the passage of FMVSS 208 S4.5.3.4, explained that automatic belts complying with the crash protection requirements of FMVSS 208 are not subject to the requirements of FMVSS 209 S4.1(b). Defs.' Ex. A at 3 (Sept. 10, 1990 letter from NHTSA to private individual); defs.' Ex. B at 2 (June 5, 1992 letter from NHTSA to private individual). Further, the few federal courts to address this specific issue reached the same conclusion as does this Court. *See Montag*, 75 F.3d at 1418 (concluding that S4.5.3 automatic belts are not subject to FMVSS 209 requirements, specifically the S4.1(b) pelvic restraint requirement); *Brand v. Mazda Motor corp.*, 978 F. Supp. 1382, 1392 (D. Kan. 1997) (applying *Montag* and concluding that 1991 Mazda Protege's automatic shoulder belt qualified as automatic belt under S4.5.3, satisfied crash protection requirements of FMVSS 208 S5.1, and that standards of FMVSS 209 thus did not apply); *O'Bryan*

---

[7] The agency's interpretation of its own regulations is entitled to substantial deference and should be given effect when the meaning of the regulations are unclear, unless that interpretation fails to " 'sensibly conform to the purpose and working of the regulation.' " *Martin v. Occupational Safety and Health Review Comm'n*, 499 U.s. 144, 150-51, 111 S.Ct. 1171, 1175-76, 113 L.Ed.2d 117 (1991) (*quoting Northern Indiana Pub. Serv. Co. v. Porter County Chapter of Izaak Walton League of America, Inc.*, 423 U.S. 12, 15, 96 S.Ct. 172, 173, 46 L.Ed.2d 156 (1975)).

v. Volkswagen of America, Inc., 838 F. Supp. 319, 322-23 (W.D. Ky. 1992) (concluding that S4.5.3 exempts FMVSS 208 S4.1.2.2 restraint system from FMVSS 209 S4.1(b) pelvic restraint requirement). Accordingly, the Protege's automatic restraint system qualifies as an automatic belt assembly under FMVSS 208 S4.5.3 despite the fact that it does not provide pelvic restraint.

b. Does S4.5.3 require an integrated Type 2 belt assembly?

Plaintiffs next argue that Mazda must provide a Type 2 seat belt assembly to comply with FMVSS 208 S4.5.3. A Type 2 assembly is defined in FMVSS 209 S3 as "a combination of pelvic and upper torso restraints." As plaintiffs point out, NHTSA has indicated that its "intent in adopting S4.5.3 was to permit manufacturers to substitute a Type 2 passive assembly with a detachable or nondetachable shoulder belt for any active seatbelt specified under an option of S4. . . . " Federal Motor Vehicle Safety Standards, 36 Fed. Reg. 23725. However, NHTSA stated more recently that an automatic belt under S4.5.3 must only satisfy the requirements found therein and does not have to qualify as a Type 2 seat belt assembly. Defs.' Ex. B. at 2 (June 5, 1992 letter from NHTSA to private individual).

FMVSS 208 S4.5.3 requires only that manufacturers install a "seat belt assembly." Given NHTSA's precision in specifying whether a particular type of assembly is required, had it intended manufacturers install a Type 2 assembly, it would have so stated in the provision. An overwhelming number of other provisions in FMVSS 208

state that a Type 2 seat belt assembly must be provided. *See. e.g.* FMVSS 208 S4.3.3.1 ("An automatic belt may not be used pursuant to S4.5.3 to meet the requirements of S4.1.5.1(a)(3) for a Type 2 seat belt assembly at any seating position equipped with an inflatable restraint . . . "); FMVSS 208 S4.1.4.2 (stating specifically that certain model vehicles "shall be equipped with a Type 2 seat belt assembly"). Clearly, NHTSA knew how to draft regulations requiring a Type 2 assembly, and the Court should not be eager to narrow a provision without substantial justification. As the court in *O'Bryan v. Volkswagen of America, Inc.* 838 F. Supp. 319, 322 (W.D. Ky. 1992), concluded "NHTSA has not required that an automatic belt substituted under S4.5.3 be an equivalent belt to the Type 1 or Type 2 seat belt it is replacing in either design or performance." *Id.* This Court agrees.

Moreover, even if S4.5.3 provided that automatic belts must meet the definition of a Type 2 seat belt assembly, the Protege's automatic shoulder belt and manual lap belt combination would most likely qualify. The type 2a shoulder belt, a subset of the Type 2 assembly, is defined as an "upper torso restraint for use only in conjunction with a lap belt as a Type 2 seat belt assembly." FMVSS 209 S3. As the definition itself reveals, when used in conjunction with a lap belt, a Type 2a belt assembly may be used "as a Type 2 seat belt assembly."[8]

---

[8] Although the NHTSA's June 5 informal interpretive letter states that "an automatic shoulder belt is not a Type 2a belt," for purposes of S4.5.3, this conclusion is stated summarily and is based solely upon the NHTSA's position that S4.5.3 automatic belts do not have to qualify as Type 2 or Type 2a seat belt assemblies.

C. The Impact of Preemption on Plaintiffs' Claims.

As the Court earlier explained, under *Irving*, claims are preempted when based on allegations that the options provided in the standards are inherently defective designs. *Irving*, 136 f.3d at 768-69. Because the Court finds that the Protege's design satisfied federal requirements, plaintiffs' claims resting on design defect must fail. Additionally, plaintiffs' claim of negligent failure to warn is also preempted.

1. Design Defect Claim.

As discussed above, the undisputed evidence reveals that the Protege's restraint system complied with FMVSS 208 requirements. Plaintiffs do not allege that an alternatively designed automatic shoulder belt and manual lap belt system would have been without defect. Instead, in Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Judgment, Plaintiffs framed their design defect claim as follows:

> The Defendants failed to adequately design their passive seat belt system to provide sufficient pelvic restraint to prevent the lower torso of the occupant from submarining under the shoulder belt, creating a risk of severe injury in even low speed slightly offset frontal collisions.

Plaintiffs are clearly alleging that the restraint system defendants chose is inherently defective because an automatic shoulder belt and manual lap belt restraint system will never provide pelvic restraint automatically. No alternative designs of the automatic shoulder belt and manual lap belt system are offered by Plaintiffs but,

instead, they argue that Defendants should have utilized one of the other systems authorized by FMVSS 208. (Pls.' Br. in Opp. at 3.)

Therefore, "[b]ecause plaintiff[s] sued Defendants for exercising an option explicitly permitted by Congress," all claims that rely upon the defective nature of the restraint system for their validity are preempted by FMVSS 208 and must be dismissed. *Id.* at 769. To the extent that Plaintiffs' strict liability and negligence claims are based upon the defective design of the Protege's restraint system, they are dismissed. Furthermore, Plaintiffs' claims for breach of express warranty, breach of implied warranty, and breach of duty to notify of a defect are dismissed because they rely upon a finding that the Protege's system is defective as well.

2. Failure to Report and Recall.

Plaintiffs also claim that Defendants had a duty to report the dangerous nature of the Protege's restraint system and to issue a recall pursuant to 15 U.S.C. § 1411, recodified at 49 U.S.C. § 30116 (1997). Manufacturers only have a duty to report and recall equipment that is defective and not in compliance with applicable motor vehicle standards. *Id.* Because the Protege's system satisfies all applicable federal standards and is not defective, this claim is dismissed as well.

3. Failure to Warn Claims.

In *Irving*, Plaintiff's failure to warn claim was dismissed on preemption grounds as well because "Plaintiff . . . tied the claims of defective design and failure to warn together" by alleging that Defendants failed to warn of the restraint system's defective nature. *Id.* at 769. In the instant case, Plaintiffs' failure to warn claims sound in negligence and strict liability. The Court will thus address each theory of recovery in turn to determine whether they depend for their validity upon a finding that the Protege's restraint system is defective.

a. Strict Liability Claim.

To recover against a manufacturer in Georgia on any claim sounding in strict liability, a defect must have existed at the time the product was sold. *Hall v. Scott USA Ltd.* 198 Ga. App. 197, 200, 400 S.E.2d 700 (1990). Plaintiffs' strict liability claim for failure to warn is clearly tied to and dependent upon a finding that the Protege's restraint system is defective and is therefore preempted.

b. Negligent Failure to Warn Claim.

As the *Irving* court pointed out, negligent failure to warn claims are not normally dependent upon a defective design claim because proof of a design defect is not required for recovery. *Id. See Michael v. Norfolk Southern Ry. Co.*, 74 f.3d 271, 273 (11th Cir. 1996) (concluding that plaintiffs' negligent failure to warn claim was not preempted by federal regulations regarding product although plaintiffs' design defect claim was preempted). Instead, a plaintiff in Georgia may recover against a

manufacturer for negligent failure to warn upon a showing that the manufacturer failed to warn consumers of a foreseeable danger arising from the normal use of the product when that danger is not open or obvious to the consumer. *Sheckells v. AGV-USA Corp.*, 987 F.2d 1532, 1534 (11th Cir. 1993); Jean M. McIntosh, *Eldridge's Georgia Products Liability* § 2-24, at 48 (1987). However, with this claim too, preemption presents an insurmountable hurdle for plaintiffs. Plaintiffs do not allege that the Protege failed to comply with federal law requirements for warning label placement regarding proper seat belt use. In comparison, the negligent failure to warn claim in *Michael* was permitted to proceed because there remained the question of whether the challenged railroad crossing actually met federal regulations and whether the crossing was negligently maintained. *Michael*, 74 F.3d at 273. Because the claims of negligent design and negligent maintenance survived, the issue of whether the defendants adequately warned of these dangers also survived. *Id.* Here, however, plaintiffs argue that even though defendants were in federal compliance with required warnings, the warnings themselves inadequately communicated the dangers of driving without the manual lap belt engaged. Thus, under *Irving*, since defendants complied with federal requirements regarding warning labels, plaintiffs' claim is preempted.

III. CONCLUSION

For the aforementioned reasons, Defendants' Motion for summary Judgment [39-11] is **GRANTED** and Plaintiffs' Motion for Partial Summary Judgment [44-1] is **DENIED**. The Clerk of the Court is HEREBY ORDERED

to dismiss this case and terminate all pending submissions.

It is so ORDERED, this 12th day of February, 1999.

Willis B. Hunt, Jr.
Judge, United States District Court

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-8310-AA

DWAYNE JAMES,
JEWELL A. JAMES,
LOUISE KARTER,

Plaintiffs-Appellants,

versus

MAZDA MOTOR CORPORATION,
POPE CHEVROLET, INC.,
TOKAI RICA CO., LTD.,
JOHN DOE,
MAZDA MOTOR OF AMERICA, INC.

Defendants-appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion_____, 11th Cir., 19___, ___F.2d___).

Before: TJOFLAT, MARCUS and KRAVITCH, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the court having requested that the Court be polled on

rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

15 U.S.C. § 1392 (d) – *Supremacy of Federal standards: allowable higher standards for vehicles used by Federal or State governments* – Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed as preventing any State from enforcing any safety standard which is identical to a Federal safety standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

15 U.S.C. § 1397 (k) – *Continuation of Common Law Liability* – Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law.

15 U.S.C. § 1411. *Notification respecting manufacturer's finding of defect or failure to comply* –

If a manufacturer –

(1) obtains knowledge that any motor vehicle or item of replacement equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

(2) determines in good faith that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 1392 of this title; he shall furnish notification to the Secretary and to owners, purchasers, and dealers, in accordance with section 1413 of this title, and he shall remedy the defect or failure to comply in accordance with section 1414 of this title.

---

49 C.F.R. § 571.208 S4.1.2.1 *First option – frontal/angular automatic protection system.* The vehicle shall:

(a) At each front outboard designated seating position meet the frontal crash protection requirements of S5.1 by means that require no action by vehicle occupants;

(b) At the front center designated seating position and at each rear designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2; and

(c) *Either.* (1) Meet the lateral crash protection requirements of S5.2 and the rollover crash protection requirements of S5.3 by means that require no action by vehicle occupants; or

(2) At each front outboard designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3, and that meets the requirements of S5.1 with front test dummies as required by S5.1, restrained by the Type 1 or Type

2 seat belt assembly (or the pelvic portion of any Type 2 seat belt assembly which has a detachable upper torso belt) in addition to the means that require no action by the vehicle occupant.

49 C.F.R. § 573.5 – *Defect and noncompliance information report*

(a) Each manufacturer shall furnish a report to the NHTSA for each defect in his vehicles or in his items of original or replacement equipment that he or the Administrator determines to be related to motor vehicle safety, and for each noncompliance with a motor vehicle safety standard in such vehicles or items of equipment which either he or the administrator determines to exist.

(2)

No. 00-1135

Supreme Court, U.S.
FILED
FEB 15 2001
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

DWAYNE JAMES, JEWEL A. JAMES, A MINOR BY NEXT FRIEND LOUISE KARTER, AND LOUISE KARTER, AS ADMINISTRATRIX OF THE ESTATE OF ROSA J. OWOLABI,
Petitioners,

v.

MAZDA MOTOR CORPORATION;
MAZDA MOTOR OF AMERICA, INC.;
TOKAI RIKA CO., LTD.,
Respondents,

AND JOHN DOE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

ANDREW T. BAYMAN*
KING & SPALDING
191 PEACHTREE STREET
ATLANTA, GEORGIA 30303
(404) 572-4600

*Counsel of Record

Attorney for Respondents

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Whether the United States Court of Appeals for the Eleventh Circuit properly held that the National Traffic and Motor Vehicle Safety Act of 1966 and Federal Motor Vehicle Safety Standard 208 preempt petitioners' automotive product liability tort claim, which alleged that respondents' 1994 Mazda Protegé was defectively designed because it was equipped with a "passive" occupant restraint system expressly permitted by Federal Motor Vehicle Safety Standard 208 and because it allegedly failed to warn that the "passive" occupant restraint system permitted under federal law constituted a "defect" under Georgia law?

RULE 29.6 STATEMENT

MAZDA MOTOR CORPORATION

(1) Ford Motor Company owns more than 10% of Mazda Motor Corporation's stock.

(2) Mazda Motor Corporation has no parent corporation.

MAZDA MOTOR OF AMERICA, INC.

(1) Mazda Motor of America, Inc.'s parent company is Mazda Motor Corporation.

TOKAI RIKA CO., LTD.

(1) Toyota Motor Corporation owns more than 10% of Tokai Rika Co., Ltd's stock.

(2) Tokai Rika Co., Ltd. has no parent corporation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	v
STATEMENT OF THE CASE	2
A. Factual Background	2
B. The Summary Judgment Proceedings and *Irving*	3
C. The Eleventh Circuit's Decision	4
REASONS FOR DENYING THE PETITION	
A. The Eleventh Circuit Opinion Properly Followed this Court's Decision in *Geier* and is Consistent with Other Federal Appellate Court Preemption Rulings	5
1. The *Geier* Decision Fully Addressed Preemption Under FMVSS 208	5
2. The Eleventh Circuit Properly Applied *Geier* and *Irving* in Reaching its Preemption Decision	7
a. The Restraint System Used in the 1994 Mazda Protegé Was An Option Available to Manufacturers Under FMVSS 208	8
b. Petitioners' Suit Seeks to Foreclose A Well-Recognized Option Under FMVSS 208	10
3. The Eleventh Circuit's Opinion Does Not Conflict with Any Post-*Geier* Analysis	12

TABLE OF CONTENTS—Continued

Page

B. Any "Escape" Provision Endorsed by *Geier* Does Not Apply Here 14

1. Respondents Have Not Admitted Defect 15

2. The "Escape" Language in *Geier* Does Not Apply Here 15

C. The Court Has No Reason To Address This Preemption Issue Again 16

CONCLUSION 17

TABLE OF AUTHORITIES

FEDERAL CASES — Page

Doyle v. Volkswagenwerk Aktiengelellschaft, 114 F.3d 1134 (11th Cir. 1997) 4

Fisher v. Ford Motor Co., 224 F.3d 570 (6th Cir. 2000) 14

Geier v. American Honda Motor Company, Inc., 529 U.S. 861, 120 S. Ct. 1913 (2000) 1, 4, 5, 6, 7, 11, 14, 15, 16

Hurley v. Motor Coach Indus., 222 F.3d 377 (7th Cir. 2000) 13, 14, 16

Irving v. Mazda Motor Corp., 136 F.3d 764 (11th Cir.), *cert. denied*, 525 U.S. 1018 (1998) ..2, 3, 4, 7, 11

King v. Ford Motor Co., 209 F.3d 886 (6th Cir.), *cert. denied*, 121 S. Ct. 386 (2000) 12, 13

Lady v. Neal Glaser Marine, Inc., 228 F.3d 598 (5th Cir. 2000) 14

Myrick v. Freuhauf Corp., 13 F.3d 1516 (11th Cir. 1994), *aff'd sub nom. Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995) 4

Pak v. Chrysler Motor Corp., 1990 U.S. Dist. LEXIS 16349 (E.D. Pa. 1990), *aff'd*, 941 F.2d 1200 (3d Cir. 1991) 11

Taylor v. General Motors Corp., 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990) 3

STATE CASES

Hernandez-Gomez v. Volkswagen of America, Inc., 917 P.2d 238 (Ariz. 1996) 12

Hyundai Motor Co. v. Alvarado, 974 S.W.2d 1 (Tex. 1998) 12

TABLE OF AUTHORITIES—Continued

FEDERAL STATUTES

Page

49 C.F.R. § 571.208, S4.5.3 (1975) 9
49 Fed. Reg. 28962 ..... 8, 9, 10
Pub. L. No. 102-240, § 2508 17

IN THE

Supreme Court of the United States

No. 00-1135

DWAYNE JAMES, JEWEL A. JAMES, A MINOR BY NEXT FRIEND LOUISE KARTER, AND LOUISE KARTER, AS ADMINISTRATRIX OF THE ESTATE OF ROSA J. OWOLABI,

Petitioners,

v.

MAZDA MOTOR CORPORATION; MAZDA MOTOR OF AMERICA, INC.; TOKAI RIKA CO., LTD.,

Respondents,

AND JOHN DOE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

Petitioners ask this Court to revisit an issue fully addressed less than nine months ago in *Geier v. American Honda Motor Company, Inc.*, 529 U.S. 861, 120 S. Ct. 1913 (2000): the preemptive effect of Federal Motor Vehicle Safety Standard ("FMVSS") 208, 49 C.F.R. § 571.208. Ignoring *Geier*, petitioners argue that FMVSS 208 does not preempt state law tort claims that foreclose passive restraint options specifically available to respondents and other automobile manufacturers under the regulation. They further argue that *Geier*

undermines the well-reasoned preemption analysis found in *Irving v. Mazda Motor Corp.*, 136 F.3d 764 (11th Cir.), *cert. denied*, 525 U.S. 1018 (1998).

As noted by the court below, "[w]e are not sure that [petitioners] have read the same *Geier* opinion that we have read." (Pet. App. at A8). This Court's decision in *Geier* does not weaken the Eleventh Circuit's analysis in *Irving* or in this case. Instead, it clearly supports the Eleventh Circuit's conclusion that petitioners' state law tort claims are impliedly preempted by FMVSS 208 and its authorizing legislation, the National Traffic and Motor Vehicle Safety Act ("the Safety Act").

STATEMENT OF THE CASE

A. Factual Background

This case arises out of a three-vehicle accident that occurred on Interstate 75 in Atlanta, Georgia on February 16, 1995. Petitioners' decedent, Rosa J. Owolabi, was driving her 1994 Mazda Protegé southbound on Interstate 75, when a large van on her right allegedly began to move leftward into her lane. Trying to avoid the van, Ms. Owolabi also moved leftward, losing control of her car and crossing two lanes of traffic as she headed toward the median barrier. Ms. Owolabi's Protegé bounced off the barrier, spun counterclockwise, and was struck by another southbound vehicle. Ms. Owolabi died shortly after the accident from blunt force abdominal trauma.

The 1994 Mazda Protegé driven by Ms. Owolabi was equipped with a passive restraint system consisting of a motorized (automatic) shoulder belt, knee bolsters, and an anti-submarining seat. The vehicle also was equipped with a manual lap belt. Ms. Owolabi was not wearing her lap belt at the time of the accident.

Petitioners subsequently filed this lawsuit, alleging that an automatic shoulder belt/manual lap belt restraint system is

inherently dangerous when the lap belt is not in use. They argued that the Protegé should have been equipped with a three-point motorized lap/shoulder belt, a door-mounted three-point passive restraint system, or a driver's side air bag. (*See* Pet. at 9 n.5). Petitioners also claimed that respondents failed to warn about dangers allegedly posed by a seat belt system with a manual lap belt.

B. The Summary Judgment Proceedings and *Irving*

After discovery, respondents moved for summary judgment on preemption grounds, citing the Eleventh Circuit's *Irving* decision. In *Irving*, the Eleventh Circuit considered the preemptive effect of FMVSS 208 on claims challenging a manufacturer's decision to use an automatic shoulder belt/manual lap belt restraint system. Like petitioners here, the *Irving* plaintiff claimed this design was defective, given the dangers allegedly associated with not wearing the lap belt and the manufacturer's failure to warn of those dangers.

Addressing the manufacturer's preemption argument, the *Irving* court noted that FMVSS 208 intentionally offered auto manufacturers a choice in determining which type of passive restraint system to place in vehicles. 136 F.3d at 768. The available options included the automatic shoulder belt/manual lap belt system used in the *Irving* car. Thus, the *Irving* plaintiff had sued the manufacturer for exercising an option specifically permitted by Congress through FMVSS 208. The court concluded that the plaintiff's state law design defect claim conflicted with federal law, requiring summary judgment for the manufacturer. As the court explained, the design claim was impliedly preempted because a state cannot impose common law damages on manufacturers for "doing what a federal act or regulation authorized them to do." *Id.* at 769 (quoting *Taylor v. General Motors Corp.*, 875 F.2d 816, 827 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990)). Furthermore, summary judgment was proper on the failure to warn allegation, which the plaintiff tied directly to the design

defect claim. Since the design claim was preempted, "there was no defect about which to warn." *Id.* at 770.

Relying on *Irving*, the district court granted respondents' motion for summary judgment in this case. The court determined that the motorized shoulder belt/manual lap belt restraint system in the 1994 Mazda Protegé complied with FMVSS 208. It further concluded that—as in *Irving*—petitioners were suing respondents for exercising a restraint system option explicitly permitted by Congress and FMVSS 208. (Pet. App. at A24). Accordingly, FMVSS 208 impliedly preempted petitioners' claims and demanded summary judgment. (*Id.* at A24-26).

C. The Eleventh Circuit's Decision

On appeal, the Eleventh Circuit affirmed the district court's grant of summary judgment to respondents. The appellate court agreed that the Mazda Protegé restraint system complied with FMVSS 208 and observed that "this case is on all fours with *Irving*." (*Id.* at A5-6). It further noted that "[i]f *Irving* is still good law, [petitioners'] appeal fails." (*Id.* at A6). Finding *Irving* alive and well, the Eleventh Circuit first dismissed petitioners' claim that the *Irving* decision violated prior Eleventh Circuit precedent in *Myrick v. Freuhauf Corp.*, 13 F.3d 1516 (11th Cir. 1994), *aff'd sub nom. Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995), and *Doyle v. Volkswagenwerk Aktiengelellschaft*, 114 F.3d 1134 (11th Cir. 1997). The circuit court next addressed petitioners' argument that this Court's decision in *Geier*, issued after the district court's summary judgment ruling, undermined *Irving*. Rejecting this argument, the court found that *Irving* applied the exact preemption analysis endorsed by *Geier* to determine "if a state common law action 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (*Id.* at A9 (quoting *Geier*, 120 S. Ct. at 1921)).

REASONS FOR DENYING THE PETITION

A. The Eleventh Circuit Opinion Properly Followed this Court's Decision in *Geier* and is Consistent with Other Federal Appellate Court Preemption Rulings.

Trying to create grounds for certiorari, petitioners claim that the Eleventh Circuit's ruling below conflicts with other state and federal court decisions and ignores *Geier*. They are wrong. No decision from another court requires certiorari in this case. On the contrary, this Court's *Geier* decision resolved the question of implied preemption under FMVSS 208. The Court need not address this issue again.

1. The *Geier* Decision Fully Addressed Preemption Under FMVSS 208.

In *Geier*, this Court considered whether FMVSS 208 preempted the plaintiffs' claims that a 1987 Honda Accord was defectively designed because it lacked an airbag. The Court first found no express preemption under the Safety Act or FMVSS 208. *Geier*, 120 S. Ct. at 1918. Turning to implied preemption, it next addressed whether the plaintiffs' claims conflicted with FMVSS 208. To resolve this question, the Court examined the history behind the regulation. It noted that in the 1970s, the Department of Transportation ("DOT") grew concerned about low seat belt use in this country and began encouraging manufacturers to install passive restraint devices in automobiles. *Id.* at 1923. In 1984, the DOT promulgated the version of FMVSS 208 at issue in *Geier* and in this case. That version required a gradual phase-in of passive restraints, but offered manufacturers options for complying with the passive requirements. The DOT specifically decided not to mandate any particular passive restraint designs. For various reasons, the Department wanted manufacturers to have *choices*:

> the standard deliberately provided the manufacturer with a range of choices among different passive restraint devices. Those choices would bring about a mix of different devices introduced gradually over time; and FMVSS 208 would thereby lower costs, overcome technical safety problems, encourage technological development, and win widespread consumer acceptance—all of which would promote FMVSS 208's safety objectives.

Id. at 1922.

The regulation purposefully sought a mix of different designs, "allowing manufacturers to choose among different passive restraint mechanisms, such as airbags, automatic belts, or other passive restraint technologies" to satisfy its performance requirements. *Id.* at 1924. The regulation thus embodied a "policy judgment that safety would best be promoted if manufacturers installed alternative protection systems in their fleets rather than one particular system in every car." *Id.* (internal quotations omitted).

Given this extensive regulatory history and the clear purpose behind FMVSS 208, the Court found the plaintiffs' "no airbag" claim impliedly preempted. The *Geier* suit tried to impose on manufacturers a common-law tort duty not required by FMVSS 208 for 1987 model-year cars: to install airbags in all vehicles. As noted by the Court, the suit conflicted directly with the choice element in FMVSS 208 and restricted the passive restraint options available to manufacturers. It "would have presented an obstacle to the variety and mix of devices the federal regulation sought" and "also would have stood as an obstacle to the gradual passive restraint phase-in that the federal regulation deliberately imposed." *Id.* at 1925. Because the plaintiffs' state tort action undermined these federal objectives, the suit was preempted. *Id.* at 1927.

Boiled down to its simplest terms, *Geier* teaches that a state tort suit cannot restrict the passive restraint options available to manufacturers under FMVSS 208. The DOT and its subdivision, the National Highway Traffic and Safety Administration ("NHTSA"), created those options for a reason. Any lawsuit that removes passive restraint options under FMVSS 208 frustrates the regulatory scheme and cannot be allowed to proceed. *Id.* at 1925.

2. The Eleventh Circuit Properly Applied *Geier* and *Irving* in Reaching its Preemption Decision.

The Eleventh Circuit foreshadowed the *Geier* decision in *Irving*. Like this Court, the *Irving* court concluded that preemption prevents a plaintiff from suing a defendant "for exercising an option explicitly permitted [under FMVSS 208] by Congress." 136 F.3d at 769. The *Geier* opinion does not draw *Irving* into question, as petitioners claim. On the contrary, it offers a ringing endorsement.

Petitioners present no clear basis for rejecting *Irving* or finding some conflict between that decision and *Geier*. They simply argue that their lawsuit will improve vehicle safety. Their lawsuit, however, will do just what *Geier* forbids—usurp the DOT's authority and frustrate the complex regulatory purpose behind FMVSS 208.[1]

---

[1] Throughout their petition, petitioners cite to the amicus brief filed by the United States in *Geier*. They apparently want this Court to believe that the United States would not endorse preemption in this case. As made clear in its *Geier* amicus brief, however, the United States clearly supports preemption under FMVSS 208. (Brief of the United States, at 15-29).

a. The Restraint System Used in the 1994 Mazda Protegé Was An Option Available to Manufacturers Under FMVSS 208.

The Eleventh Circuit and the district court concluded—and petitioners do not question here—that the passive restraint system installed in the 1994 Mazda Protegé was a choice available to respondents under FMVSS 208. (Pet. App. at A5, A24). The system, which consisted of a two point automatic shoulder belt, knee bolsters, and an anti-submarining seat, complied with the performance criteria established in FMVSS 208 S4.1.2.1, the provision applicable to cars manufactured on or after September 1, 1989, but before September 1, 1996. (*Id.*) In addition, the system was equipped with a manual lap belt. The automatic shoulder belt/manual lap belt system was well recognized as an appropriate belt system under FMVSS 208.

In 1980 and 1981, Toyota developed an automatic shoulder belt system with knee bolsters plus a manual lap belt. The Toyota automatic belt system had a dramatically higher usage rate than traditional, manual restraint systems and met the dynamic crash and injury criteria of FMVSS 208 *even without the lap belt*. As a result, NHTSA gave the system's inventor, Masanao Motonami, its Safety Award For Engineering Excellence for his design and its important contribution to automotive safety. Significantly, NHTSA reported in 1984 that the usage rate for this system was over ninety percent, higher than any other automotive restraint system. *See* 49 Fed. Reg. 28962, 28983-84.

This type of restraint system—the same system used in the 1994 Mazda Protegé—was an accepted option for automobile manufacturers. Quite deliberately, FMVSS 208 did not mandate that manufacturers choose one form of passive restraint over another. *See* 49 Fed. Reg. at 28999-29000. Rather, it set forth performance requirements for passive restraints and, for passive belts, established the following

guidelines: "a seat belt assembly that requires no action by vehicle occupants (hereinafter referred to as 'automatic belt') may be used to meet the crash protection requirements of any option under S4 [including S4.1.2.1] and in place of any seat belt assembly otherwise required by that option." 49 C.F.R. § 571.208, S4.5.3 (1975).

Thus, FMVSS 208 specifically authorizes an automatic shoulder belt that meets its performance requirements, with or without any type of lap belt—manual or automatic. This rule has never changed. Indeed, on September 10, 1990, NHTSA reaffirmed that an automatic shoulder belt restraint system that meets the applicable performance requirements "[is] not required to provide lap belts either as part of the automatic belt or as a separate manual belt." (*See* Exhibit A to Respondents' Brief in Support of Motion for Summary Judgment, R-2-39 (September 10, 1990 letter from Paul Jackson Rice, Chief Counsel, National Highway Traffic Safety Administration, to Rembert Ryals, Esq.)). In 1992, NHTSA again instructed that "an automatic belt consisting solely of a shoulder belt may be used pursuant to S4.5.3 of Standard No. 208 to meet the crash protection requirements of the standard and in place of any seat belt assembly that would otherwise be required." (*See* Exhibit B to Respondents' Brief in Support of Motion for Summary Judgment, R-2-39 (June 5, 1992 letter from Paul Jackson Rice, Chief Counsel, National Highway Traffic Safety Administration, to Robert S. McLean, Esq.)).

As noted in *Geier*, the DOT determined in 1984 that mandating a single type of passive restraint was not in the public interest, because any such mandate would risk "killing or seriously retarding development" of other systems. 49 Fed. Reg. at 29001. Accordingly, the DOT believed the auto industry should have "latitude" regarding what passive restraints to install in cars. "Flexibility" was the benchmark, and manufacturers could comply with FMVSS 208's passive

restraint requirement with any adequate technology. *Id.* at 28997, 29000. That technology specifically and prominently included options such as an automatic shoulder belt system with or without a manual lap belt. Indeed, the DOT noted in 1984 that (1) those systems were the only systems in significant use with a proven track record, *id.* at 28965; (2) their usage rates were high, *id.* at 28983-84; (3) they were relatively inexpensive, *id.* at 28989-90; and (4) they were available "immediately," of particular importance during the passive restraint phase-in, *id.* at 28999.

b. Petitioners' Suit Seeks to Foreclose A Well-Recognized Option Under FMVSS 208.

Respondents chose a well-recognized restraint system option for the 1994 Mazda Protegé. That option met the performance criteria and flexibility objectives of FMVSS 208. Petitioners now want this system declared unlawful, despite the federal government's express authorization of it. As noted by the district court, petitioners do not claim that an alternatively designed automatic shoulder belt/manual lap belt restraint system—such as a system with different anchor points—would be without defect. Instead, plaintiffs criticize respondents' *choice of this system*: "[Petitioners] are clearly alleging that the restraint system [respondents] chose is inherently defective because an automatic shoulder belt and manual lap belt restraint system will never provide pelvic restraint automatically." (Pet. App. at A23). They further claim that respondents should have equipped the Protegé with an airbag or a belt system utilizing an automatic lap belt.[2] (Pet. at 9 n.5; Pet. App. at A23-24).

Without doubt, petitioners' defect claims are preempted under *Geier* and *Irving*. If allowed to proceed, those claims

---

[2] Petitioners admit that *Geier* preempts any claim that the 1994 Mazda Protegé should have included an airbag. (Pet. at 2-3).

would foreclose an option clearly available to manufacturers under FMVSS 208, thereby presenting "an obstacle to the variety and mix of devices that the federal regulation sought." *Geier*, 120 S. Ct. at 1925. Petitioners want to impose common law damages on respondents for selecting a passive restraint system endorsed by the federal government and specifically permitted by FMVSS 208. They must not be allowed to do so. Respondents chose a seat belt system that federal regulations permitted them to choose. They cannot be sued for this choice. The Eleventh Circuit properly found that petitioners' design defect allegations frustrate the purpose of FMVSS 208, placing those allegations clearly within the doctrine of implied preemption. *Id.*

Petitioners' failure to warn claim similarly undermines FMVSS 208. The failure to warn allegation is inextricably linked to the design defect claim. Petitioners argue that respondents had a duty to warn of the allegedly dangerous and defective condition presented by a seat belt system without an automatic lap belt. The seatbelt system in the 1994 Mazda Protegé, however, is not—and cannot be deemed—defective under state tort law. This seat belt system was a viable option under FMVSS 208. Imposing tort liability for failure to warn of alleged "dangers" associated with the system frustrates the options available under the regulation; a manufacturer should not be required to answer in tort for choosing an option permitted by FMVSS 208. In short, petitioners cannot circumvent preemption "by relying on a duty-to-warn theory of liability." *Pak v. Chrysler Motor Corp.*, 1990 U.S. Dist. LEXIS 16349, at *5 (E.D. Pa. 1990), *aff'd* 941 F.2d 1200 (3d Cir. 1991) (per curiam); *see also Irving*, 136 F.3d at 770 ("Because Plaintiff's defective-design claim is preempted by FMVSS 208, there was no defect about which to warn. Plaintiff's failure-to-warn claim—which is, in this case, dependent on the preempted defective-design claim—was properly dismissed.").

3. The Eleventh Circuit's Opinion Does Not Conflict with Any Post-*Geier* Analysis.

Petitioners also claim that the Eleventh Circuit's decision conflicts with a 1998 opinion from the Texas Supreme Court, a 1996 opinion from the Arizona Supreme Court, and an April 2000 decision from the Sixth Circuit. *See King v. Ford Motor Co.*, 209 F.3d 886 (6th Cir.), *cert. denied*, 121 S. Ct. 386 (2000); *Hyundai Motor Co. v. Alvarado*, 974 S.W.2d 1 (Tex. 1998); *Hernandez-Gomez v. Volkswagen of America, Inc.*, 917 P.2d 238 (Ariz. 1996). None of these opinions provides grounds for certiorari.

Each case cited by petitioners was decided *prior* to *Geier* and lacked the benefit of *Geier*'s preemption analysis. In *Alvarado*, for example, the Texas Supreme Court sought to resolve the following issue: "whether the Safety Act and the regulations under it preempt common-law damage claims if the manufacturer chooses an option permitted by the federal regulations." 974 S.W.2d at 4. Before discussing preemption, the *Alvarado* court noted that "[b]ecause the United States Supreme Court has not addressed the particular issue before us, we must independently analyze Hyundai's contention that the Alvarados' claims are preempted based upon the lessons we draw from relevant Supreme Court authority." *Id.* at 6. Without *Geier*'s guidance, the Texas court found no preemption. *Id.* at 13; *see also Hernandez-Gomez*, 917 P.2d at 247-48 (finding, pre-*Geier*, that state tort liability imposed for selecting an option authorized by FMVSS 208 does not interfere with Congress' methods). Any conflict or confusion created by such "no preemption" rulings has been resolved by *Geier*. The United States Supreme Court need not step in again to address preemption under FMVSS 208.

The Sixth Circuit's decision in *King* also does not support certiorari. Like the Texas and Arizona state opinions, *King* was decided before *Geier*. Furthermore, the *King* case is

distinguishable from, and thus does not conflict with, the Eleventh Circuit's decision here. The *King* plaintiffs did not argue—as petitioners do—that a two-point automatic seat belt with a manual lap belt is inherently defective. 209 F.3d at 892. Rather, the *King* plaintiffs claimed that "the specific design was defective due to failure to use load limiters and/or change the location of the knee bolster and/or change the location of the belt anchor." *Id.* Under *King*, because the plaintiffs were not challenging the manufacturer's overall decision to use an automatic shoulder belt/manual lap belt restraint system, their claims were not preempted by FMVSS 208. *Id.* at 892-93. The *King* opinion, therefore, is easily distinguishable from this case, which involves claims that the automatic shoulder belt/manual lap belt restraint option is inherently dangerous.[3] (*See* Pet. App. at A23 ("[Petitioners] are clearly alleging that the restraint system [respondents] chose is inherently defective because an automatic shoulder belt and manual lap belt restraint system will never provide pelvic restraint automatically.").

Despite petitioners' claims, other courts have construed *Geier* in a manner consistent with the Eleventh Circuit. In *Hurley v. Motor Coach Indus.*, 222 F.3d 377 (7th Cir. 2000), for example, the Seventh Circuit applied *Geier* to conclude that FMVSS 208 preempted the plaintiff's claim that a bus driver's seat should be equipped with an airbag, a three-point seat belt, knee bolsters, and a roll cage, rather than simply a two-point seat belt. The Seventh Circuit noted that the *Hurley* plaintiff's theory was "remarkably close" to the one

---

[3] The *King* case also involved a claim that the manufacturer failed to warn of dangers allegedly associated with not wearing the lap belt portion of the restraint system. The Sixth Circuit's preemption discussion does not specifically address the failure to warn claim. *See King*, 209 F.3d at 891-93. To the extent *King* holds that such a failure to warn claim is not impliedly preempted, as petitioners suggest (*see* Pet. at 20), that ruling cannot survive *Geier*.

rejected in *Geier*. 222 F.3d at 381. FMVSS 208 explicitly gave bus manufacturers the option of equipping the driver's seat with only a two-point belt. Because the plaintiff's theory foreclosed this option, it was preempted: "[A]s in *Geier*, the decision to leave options open to bus manufacturers was made with specific policy objectives in mind. Hurley's suit, if successful, would undermine that policy objective and is preempted." *Id.* at 382; *see also Fisher v. Ford Motor Co.*, 224 F.3d 570, 573 (6th Cir. 2000) (noting that *Geier* supported district court decision that "state law could not require alternative [airbag] warning labels containing different language from that mandated by NHTSA" in FMVSS 208); *Lady v. Neal Glaser Marine, Inc.*, 228 F.3d 598 (5th Cir. 2000) (*Geier* supported conclusion that Federal Boat Safety Act preempted tort claim that boat was defective for failing to include propeller guard).

Petitioners have pointed to no post-*Geier* opinion that conflicts with the Eleventh Circuit's decision below. In fact, like the Eleventh Circuit, other courts have applied *Geier*'s preemption analysis outside of the "no airbag" claim context. The Eleventh Circuit properly construed *Geier* and other binding precedent in this case. Certiorari is neither necessary nor appropriate.

B. Any "Escape" Provision Endorsed by *Geier* Does Not Apply Here

To support certiorari, petitioners also try to take advantage of what they view as an "escape clause" in *Geier*'s analysis. (Pet. at 23). They argue that respondents knew—and have "admitted"—that the restraint system in the 1994 Mazda Protegé is dangerous, precluding preemption. They key on *Geier*'s reference to an extremely limited circumstance that might "escape" preemption. *Geier*, 120 S. Ct. at 1928. This potential escape valve does not help petitioners here.

1. Respondents Have Not Admitted Defect.

As an initial matter, respondents have *never* admitted that the 1994 Mazda Protegé restraint system is defective. On the contrary, respondents have vigorously defended a design that complies with FMVSS 208. To support their "admission" claim, petitioners cite—out of context—deposition testimony given by Hisao Muramoto, a Japanese engineer who testified through an interpreter. Mr. Muramoto, however, did not testify that the Protegé restraint system, which he helped design, is defective. He simply stated that the manual lap belt should be worn because it offers extra protection in certain types of accidents. As noted by Mr. Muramoto, the Protegé seat belt system could meet FMVSS 208 requirements *without* a lap belt. Nevertheless, respondents provided *additional* safety features by including a manual lap restraint. (Muramoto Dep. at 63; *see also* Pet. at 4 (quoting Muramoto testimony)).

In this case, petitioners criticize respondents for adding *more* safety features, concluding that this safety decision somehow makes the Protegé's restraint system "defective." They are wrong. Respondents selected a restraint system that the federal government expressly permitted them to use. That selection cannot create tort liability.[4]

2. The "Escape" Language in *Geier* Does Not Apply Here.

The *Geier* decision recognizes a *possible* preemption escape for limited claims that involve only a few cars and do not obstruct FMVSS 208's mixed fleet approach to passive restraints:

---

[4] At points in their Petition, petitioners imply that FMVSS 208 is merely a "minimum" safety standard. (*See* Pet. at 22). As this Court has recognized, however, FMVSS 208 cannot be characterized as a "minimum" standard. *Geier*, 120 S. Ct. at 1922. Rather, it "deliberately provided the manufacturer with a range of choices among different passive restraint devices." *Id.*

> It is possible that some special design-related circumstance concerning a particular kind of car might require airbags, rather than automatic belts, and that a suit seeking to impose that requirement could escape pre-emption—say, because it would effect so few cars that its rule of law would not create a legal 'obstacle' to 208's mixed-fleet, gradual objective.

Geier, 120 S. Ct. at 1928. This escape possibility—which the Court noted was merely an open question, *id.*—does not apply here.

No design feature in the 1994 Mazda Protegé required installation of any particular restraint system. Respondents were free to choose from the passive restraint options permitted by FMVSS 208. Furthermore, the automatic shoulder belt/manual lap belt system ultimately selected was not restricted to only a few vehicles. Respondents, as well as numerous other auto manufacturers, have used this type of system in many vehicle models since its invention in the early 1980s. Petitioners claim that a vehicle equipped with an automatic shoulder belt/manual lap belt system cannot be safe. Their claim does not—in any way—fall within the potential escape provision referenced in *Geier*. *See id.* (noting that the *Geier* plaintiffs cannot escape preemption because "[t]hey have argued generally that, to be safe, a car must have an airbag"); *Hurley*, 222 F.3d at 382-383 (potential loophole discussed in *Geier* could not apply because the plaintiff "has pointed to nothing about the design of this particular bus that makes it different from the average 'bus with a gross vehicle weight rating of more than 10,000 pounds'").

C. The Court Has No Reason To Address This Preemption Issue Again

This Court has already addressed the preemptive effect of FMVSS 208. Petitioners have presented nothing that requires reexamination here. The *Geier* opinion clearly articulates the

Court's preemption analysis under FMVSS 208 and the Safety Act. No lower court has had difficulty applying the Court's decision, and additional guidance is not needed. The Supreme Court closed the loop on FMVSS 208 preemption in *Geier*.

Moreover, further Court analysis of the passive restraint options under FMVSS 208 will have no lasting usefulness. All model-year 1998 and later passenger vehicles must be equipped with airbags. *See* Pub. L. No. 102-240, § 2508. Beginning with the 1998 model year, therefore, the passive seat belt became obsolete in the United States. Claims relating to passive belt systems will steadily decline as consumers stop driving pre-1998 vehicles. Any pronouncement by this Court about passive seat belts will similarly fade in relevance. The Court should not spend time on a preemption issue that was fully addressed in *Geier* and that promises to become outdated in the near future.

CONCLUSION

Certiorari review is neither necessary nor appropriate in this case. Less than one year ago, the Court addressed the issues raised by petitioners and provided ample guidance to lower courts. Accordingly, respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

ANDREW T. BAYMAN*
KING & SPALDING
191 PEACHTREE STREET
ATLANTA, GEORGIA 30303
(404) 572-4600

*Counsel of Record

Attorney for Respondents

APPENDICES

APPENDIX A

SEP 10, 1990

Rembert Ryals, Esq.
1177 Jadwin Avenue, Suite A
P.O. Box 1930
Richland, WA 99352

Dear Mr. Ryals:

This responds to your letter to Steve Kratzke of my Staff in which you asked for an interpretation of the requirements of Standards No; 208, *Occupant Cash Protection* and No. 209, *Seat Belt Assemblies* (49 CFR § 571.208 and § 571.209 respectively). Specifically, you asked whether manufacturers were required to install a lap belt at seating positions equipped with automatic belts certified as complying with the occupant protection requirements in Standard No. 208. Your letter indicated that you were particularly interested in the requirements that applied to 1980 model year cars. The answer to your question is no.

S4.1.2 of Standard No. 208 gives vehicle manufacturers a choice of three options for providing occupant crash protection. Option 1, set forth in S4.1.2.1, requires vehicle manufacturers to provide automatic protection at the front outboard seating positions, safety belts at all other seating positions, and *either* meet the lateral crash protection and rollover requirements by means of automatic protection systems *or* have manual safety belts at the front outboard seating positions such that those positions comply with the occupant protection requirements when occupants are protected by both the safety belts and the automatic protection. Option 2, set forth in S4.1.2.2, requires vehicle manufacturers to provide a safety belt at every seating position, have automatic protection for the front outboard seats, and have a warning system for the safety belts

provided. Option 3, set forth in S4.1.2.3, requires the manufacturer to install safety belts at every seating position and to have a warning system for those belts. All cars manufactured on or after September 1, 1989 must be certified as complying with Option 1.

However, S4.5.3 of Standard No. 208 contains an important proviso. This provides that an automatic belt system may be used to meet the crash protection requirements of any option set forth in 54.1.2 and in place of any safety belt system that would otherwise be required by that option.

I have enclosed a copy of the December 14, 1972 rule (36 FR 23725) that added the current version of S4.5.3 to Standard No. 208.

In telephone conversations with you, Mr. Kratzke bas explained that there is no requirement in the Federal safety standards that seating positions equipped with automatic belts include a lap belt either as part of the automatic belt or as a separate manual belt. Your letter indicates that you believe that two regulatory provisions appear to require a lap belt in 1980 Volkswagens at seating positions equipped with an automatic shoulder belt and knee bolsters.

First, you suggested that Option 1 (S4.1.2.1) of Standard No. 208 requires automobiles to meet lateral and rollover crash protection requirements, in addition to providing automatic protection in frontal crashes. This is an erroneous reading of S4.1.2.l(c). Manufacturers have the choice of certifying compliance with the lateral and rollover crash protection requirements (S4.1.2.l(c)(l)) or of providing manual safety belts at the front outboard seating positions such that the vehicle meets the protection requirement with a test dummy protected by both the safety belt and the automatic protection system (S4.l.2.l(c)(2)). When this latter option is chosen, the vehicle manufacturer could use the automatic safety belt in place of the specified manual safety belt, in accordance with

the provisions of S4.5.3. Hence, a manufacturer could certify compliance with Option 1 without providing a manual lap belt at seating positions equipped with an automatic shoulder belt and knee bolsters.

It is not clear, however, that Volkswagen chose to certify that its cars complied with Option 1 in Standard No. 208. In a January 30, 1974 notice (39 PR 3834; copy enclosed), NHTSA indicated its understanding that the Volkswagen automatic belts were certified as complying with Option 2. In that notice, the agency stated that S4.5.3 of Standard No. 208. "permits the use of the Volkswagen passive belt system to meet the perpendicular impact protection requirements of option two and to replace the required seat belt assemblies." If Volkswagen certified its vehicles as complying with Option 2, the requirements of Option 1 would not be relevant.

Second, you noted that S4.1(b) of Standard No. 209, *Seat Belt Assemblies* (49 CFR § 571.209) specifies that a seat belt assembly "shall provide pelvic restraint is provided, . . ." You suggested that the Volkswagen belt system without a lap belt does not appear to comply with this requirement of Standard No. 209.

As Mr. Kratzke explained to you in your telephone conversation, the applicability of Standard No. 209 to crash-tested automatic belts is addressed in S4.5.3.4 of Standard No. 208. That provision in Standard No. 208 provides that automatic belts that are not required to meet the crash protection requirements shall conform to the webbing, attachment hardware, and assembly performance requirements of Standard No. 209. The agency explained this provision as follows in the 1971 notice that added this language to standard No. 208, "On reconsideration, the NHTSA has decided that relief from Standard No. 209 should be afforded if a passive belt is capable of meeting the occupant crash protection requirements of S5.1 in a frontal perpendicular impact and amends S4.5.3 accordingly." 36 FR

23725; December 14, 1971. Thus, automatic belts that are certified as complying with the occupant crash protection requirements of Standard No. 209 are not generally subject to the requirements of Standard No. 209.

In a September 12, 1979 letter from this office to Mr. Frank Pepe (copy enclosed), NETSA explained that automatic belts must meet the adjustment requirements of S7.1 of Standard No. 208 and those parts of Standard No. 209 that are incorporated by reference in S7.1 of Standard No. 208. That letter also noted that automatic belts installed to meet the frontal crash protection requirements are exempted from all other requirements of standard No. 209 by virtue of S4.5.3.4 of Standard No. 208. Since S4.1(b) of Standard No. 209 is not incorporated by reference in S7.1 of Standard No. 208, seating positions equipped with automatic belts that are certified as complying with the frontal crash protection requirements are not required to provide lap belts either as part of the automatic belt or as a separate manual belt.

I hope this information is helpful. If you have any more questions about this issue, feel free to contact Mr. Kratzke at this address or by telephone at (202) 366-2992.

Sincerely,

_____

Paul Jackson Rice
Chief Counsel

Enclosures

APPENDIX B

[LOGO]

400 Seventh Street.
Washington. D.C. 20590

US. Department.
of Transportation

National Highway.
Traffic Safety
Administration.

Jun 5, 1992

Robert S. McLean, Esq.
King. & Spalding
191 Peachtree Street
Atlanta, GA 30303-1763

Dear Mr. McLean:

This responds to your request for additional information on the requirements applicable to automatic belts. In response to your March 9, 1992 letters, I sent you a March 30, 1992 letter explaining how our requirements apply to automatic belts. Specifically, I explained that an automatic shoulder belt is not a Type 2a belt, as defined in Standard No. 209, and that automatic belts are not required to include any warnings required for Type 2a belts. I noted that all the requirements applicable to automatic belts are set forth in S4.5.3 of Standard No. 208.

On May 19, 1992, you sent a FAX to Steve Kratzke of this office asking for a further clarification of the requirements applicable to automatic belts. You followed the FAX up with a telephone call on May 27, 1992, during which you explained that you were seeking an opinion from me with respect to an interpretation that is being asserted in litigation in which you are involved. The issue involves the crash protection requirements in Standard No. 208. S4.1.2 of Standard No. 208 gives vehicle manufacturers a choice of

three options for providing occupant crash protection and sets forth specific belt installation requirements for each option. However, S4.5.3 of Standard No. 208 contains an important proviso. This section provides that an automatic seat belt assembly may be used to meet the crash protection requirements of any option set forth in S4.1.2 and in place of any seat belt assembly that would otherwise be required by that option.

You explained that another party in your litigation is asserting that an automatic belt, which consists solely of a shoulder belt, could not be used pursuant to S4.5.3 of Standard No. 208 to meet the crash. protection requirements of any option in S4.1.2 of Standard No. 208. This is so because, according to this argument, an automatic belt which consists. solely of a shoulder belt is not a "seat belt assembly . "The reason it is asserted that a shoulder belt alone cannot be a "seat belt assembly" is that S4.1(b) of Standard No. 209 requires that "a seat belt assembly shall provide pelvic restraint." Since an automatic belt that consists solely of a shoulder belt does not provide pelvic restraint, this argument concludes that automatic belts that do not provide pelvic restraint must not be "seat belt assemblies" within the meaning of Standard No. 209. if these belts are not seat belt assemblies, they are not eligible to be used pursuant to S4.5.3 of Standard No. 208 in place of seat belt assemblies otherwise required by Standard No. 208.

This argument is without merit. Contrary to the assertion in this argument, automatic belts which consist solely of a shoulder belt are "seat belt assemblies" within the meaning of 53 of Standard No. 209. That section defines a "seat belt assembly" as "any strap, webbing, or similar device designed to secure a person in a motor vehicle in order to mitigate the results of any accident, including all necessary buckles and other fasteners, and all hardware designed for installing such seat belt assembly in a motor vehicle." An automatic belt

consisting solely of a shoulder belt falls squarely within this definition. Thus, an automatic belt consisting solely of a shoulder belt may be used pursuant to S4.5.3 of Standard No. 208 to meet the crash protection requirements of the standard and in place of any seat belt assembly that would otherwise be required.

It may be that this argument was offered because the person was not aware that automatic belts are not generally subject to the provisions of Standard No. 209 that apply to manual seat belt assemblies, as explained in my March 30, 1992 letter to you. Thus, S4.1(b) of Standard No. 209 does not apply to automatic belts. In place of Standard. No. 209's general requirements for manual seat belt assemblies, S4.5.3 of Standard No. 208 sets forth special requirements for automatic belts. No provision of S4.5.3 of Standard No. 208 precludes the use of automatic belts that consist solely of a shoulder belt.

I hope this information clarifies any lingering questions you may have had. As before, if you need any further information on the requirements applicable to automatic belts, feel free to contact Steve Kratzke at this address or by telephone at (202) 366-2992.

Sincerely,

/s/ Paul Jackson Rice
PAUL JACKSON RICE
Chief Counsel